

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 24

Introduced by Senator Hill

December 1, 2014

An act to amend Sections 22950.5, 22951, 22952, 22956, 22958, 22960, 22961, 22962, 22963, 22970.2, 22971, 22972, 22973, 22974, 22974.7, 22980, 22980.1, 22980.2, 22980.3, and 22980.4 of, and to add Section 22950.1 to, the Business and Professions Code, *to amend Section 1947.5 of the Civil Code, to amend Section 48901 of the Education Code, to amend Section 7597 of the Government Code, to amend Sections 1234, 1286, 1530.7, 1596.795, 104495, 113953.3, 113977, 113978, 114332.3, 114371, 118910, 118925, 118930, 118935, and 118948 of, and to add Section 119406 to, the Health and Safety Code, and to amend Section 6404.5 of the Labor Code, to amend Section* Sections 308 and 640 of the Penal Code, *to amend Sections 561 and 99580 of the Public Utility Code, and to amend Sections 12523 and 12523.5 of the Vehicle Code,* relating to electronic cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

SB 24, as amended, Hill. ~~STAKE Act: electronic cigarettes.~~
Electronic cigarettes: licensing and restrictions.

Existing

(1) *Existing* law, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act), establishes various requirements for distributors and retailers relating to tobacco sales to minors. Existing law makes it a crime, punishable by a fine not to exceed \$500 or by imprisonment not exceeding 30 days in a county jail, to fail to post a notice, at each point of purchase, stating that the sale of tobacco products to minors is illegal.

Existing law also permits enforcing agencies to assess various civil penalties for violations of the STAKE Act.

This bill would extend the requirements of the STAKE Act to the sale of electronic cigarettes to minors. The bill would require the State Department of Public Health to enforce the STAKE Act's provisions with regard to sales of electronic cigarettes commencing July 1, 2016.

The bill would make the failure to post a notice, on and after July 1, 2016, at each point of purchase, stating that the sale of electronic cigarettes to minors is illegal, a crime. By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

The bill would provide that the STAKE Act does not invalidate existing local government ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products, or prohibit local governments from adopting ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products that are more restrictive than state law.

~~Existing~~

(2) Existing law prohibits a person from selling or otherwise furnishing an electronic cigarette to minors, and makes a violation punishable as an infraction.

The bill would require that cartridges for electronic cigarettes and solutions for filling electronic cigarettes be in child-proof packaging to protect children from opening and ingesting the contents.

~~Existing~~

(3) Existing law, the Cigarette and Tobacco Products Licensing Act, requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. Existing law makes a violation of the Cigarette and Tobacco Products Licensing Act a misdemeanor punishable by a fine not to exceed \$5,000, by imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment. Existing law also permits the State Board of Equalization to assess various civil penalties for violations of the Cigarette and Tobacco Products Licensing Act.

The bill would require retailers to apply for a license to sell electronic cigarettes commencing July 1, 2016, and to display the license at each retail location commencing September 30, 2016. The bill would require the State Board of Equalization to administer a statewide program to license retailers of electronic cigarettes. The bill would also make

retailers of electronic cigarettes subject to various civil and criminal penalties if they fail to comply with licensing requirements.

(4) Existing law prohibits the smoking of cigarettes and other tobacco products in a variety of specified areas. Under existing law, a violation of some of these provisions is punishable as a crime.

This bill would prohibit the use of electronic cigarettes in a variety of specified areas where the smoking of cigarettes and other tobacco products is prohibited. The bill would also make corresponding changes. The bill would make the use of electronic cigarettes in some of these restricted locations a violation punishable as a crime.

This bill would extend the STAKE Act to sales of electronic cigarettes to minors. The bill would require the State Department of Public Health to enforce the STAKE Act's provisions with regard to sales of electronic cigarettes commencing July 1, 2016.

The bill would provide that the STAKE Act does not invalidate existing local government ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products, or prohibit local governments from adopting ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products that are more restrictive than state law.

The bill would require that retailers apply for a license to sell electronic cigarettes commencing April 15, 2016, and to display the license at each retail location commencing June 30, 2016. The bill would require the State Board of Equalization to administer a statewide program to license retailers of electronic cigarettes.

The bill would make the failure to post a notice, on and after July 1, 2016, at each point of purchase, stating that the sale of electronic cigarettes to minors is illegal, a crime. The bill would also make retailers of electronic cigarettes subject to various civil and criminal penalties if they fail to comply with licensing requirements. By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

The bill would require that cartridges for electronic cigarettes and solutions for filling electronic cigarettes be in child-proof packaging to protect children from opening and ingesting the contents.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22950.1 is added to the Business and
2 Professions Code, to read:

3 22950.1. Nothing in this division nor any other law shall be
4 construed to invalidate an existing ordinance of, or prohibit the
5 adoption of an ordinance by, a city or county that regulates the
6 distribution or sale of cigarettes, electronic cigarettes, or tobacco
7 products in a manner that is more restrictive than this division, to
8 the extent that the ordinance is not otherwise prohibited by federal
9 law.

10 SEC. 2. Section 22950.5 of the Business and Professions Code
11 is amended to read:

12 22950.5. For purposes of this division, the following terms
13 have the following meanings:

14 (a) "Department" means the State Department of Public Health.

15 (b) "Enforcing agency" means the State Department of Public
16 Health, another state agency, including, but not limited to, the
17 office of the Attorney General, or a local law enforcement agency,
18 including, but not limited to, a city attorney, district attorney, or
19 county counsel.

20 ~~(c) "Tobacco product" means a product containing tobacco leaf,~~
21 ~~including, but not limited to, cigarettes, cigars, pipe tobacco, snuff,~~
22 ~~chewing tobacco, dipping tobacco, bidis, or other preparation of~~
23 ~~tobacco, or a tobacco substitute.~~

24 ~~(d) "Electronic cigarette" means a device that can provide an~~
25 ~~inhalable dose of nicotine by delivering a vaporized solution.~~

26 (c) "Electronic cigarette" has the same meaning as that term
27 is defined in subdivision (b) of Section 119405 of the Health and
28 Safety Code and shall also include any aerosol or vapor cartridge
29 or other container of a solution, that may or may not contain
30 nicotine, that is intended to be used with or in an electronic
31 cigarette.

32 SEC. 3. Section 22951 of the Business and Professions Code
33 is amended to read:

34 22951. The Legislature finds and declares that reducing and
35 eventually eliminating the illegal purchase and consumption of

1 tobacco products and electronic cigarettes by minors is critical to
2 ensuring the long-term health of our state’s citizens. Accordingly,
3 California must fully comply with federal regulations, particularly
4 the “Synar Amendment,” that restrict tobacco sales to minors and
5 require states to vigorously enforce their laws prohibiting the sale
6 and distribution of tobacco products to persons under 18 years of
7 age. Full compliance and vigorous enforcement of the “Synar
8 Amendment” requires the collaboration of multiple state and local
9 agencies that license, inspect, or otherwise conduct business with
10 retailers, distributors, or wholesalers that sell tobacco.

11 SEC. 4. Section 22952 of the Business and Professions Code
12 is amended to read:

13 22952. The State Department of Public Health shall do all of
14 the following:

15 (a) Establish and develop a program to reduce the availability
16 of tobacco products and electronic cigarettes to persons under 18
17 years of age through the enforcement activities authorized by this
18 division.

19 (b) Establish requirements that retailers of tobacco products or
20 electronic cigarettes post conspicuously, at each point of purchase,
21 a notice stating that selling tobacco products or electronic cigarettes
22 to anyone under 18 years of age is illegal and subject to penalties.
23 The notice shall also state that the law requires that all persons
24 selling tobacco products or electronic cigarettes check the
25 identification of a purchaser of tobacco products or electronic
26 cigarettes who reasonably appears to be under 18 years of age.
27 The warning signs shall include a toll-free telephone number to
28 the department for persons to report unlawful sales of tobacco
29 products or electronic cigarettes to minors.

30 (c) Provide that primary responsibility for enforcement of this
31 division shall be with the department. In carrying out its
32 enforcement responsibilities, the department shall conduct random,
33 onsite sting inspections at retail sites and shall enlist the assistance
34 of persons that are 15 and 16 years of age in conducting these
35 enforcement activities. The department may conduct onsite sting
36 inspections in response to public complaints or at retail sites where
37 violations have previously occurred, and investigate illegal sales
38 of tobacco products or electronic cigarettes to minors by telephone,
39 mail, or the Internet. Participation in these enforcement activities
40 by a person under 18 years of age does not constitute a violation

1 of subdivision (b) of Section 308 of the Penal Code for the person
2 under 18 years of age, and the person under 18 years of age is
3 immune from prosecution thereunder, or under any other provision
4 of law prohibiting the purchase of these products by a person under
5 18 years of age.

6 (d) In accordance with Chapter 3.5 (commencing with Section
7 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
8 the department shall adopt and publish guidelines for the use of
9 persons under 18 years of age in inspections conducted pursuant
10 to subdivision (c) that shall include, but not be limited to, all of
11 the following:

12 (1) An enforcing agency may use persons under 18 years of age
13 who are 15 or 16 years of age in random inspections to determine
14 if sales of cigarettes, electronic cigarettes, or other tobacco products
15 are being made to persons under 18 years of age.

16 (2) A photograph or video recording of the person under 18
17 years of age shall be taken prior to each inspection or shift of
18 inspections and retained by the enforcing agency for purposes of
19 verifying appearances.

20 (3) An enforcing agency may use video recording equipment
21 when conducting the inspections to record and document illegal
22 sales or attempted sales.

23 (4) The person under 18 years of age, if questioned about his
24 or her age, need not state his or her actual age but shall present a
25 true and correct identification if verbally asked to present it. Any
26 failure on the part of the person under 18 years of age to provide
27 true and correct identification, if verbally asked for it, shall be a
28 defense to an action pursuant to this section.

29 (5) The person under 18 years of age shall be under the
30 supervision of a regularly employed peace officer during the
31 inspection.

32 (6) All persons under 18 years of age used in this manner by an
33 enforcing agency shall display the appearance of a person under
34 18 years of age. It shall be a defense to an action under this division
35 that the person's appearance was not that which could be generally
36 expected of a person under 18 years of age, under the actual
37 circumstances presented to the seller of the cigarettes, electronic
38 cigarettes, or other tobacco products at the time of the alleged
39 offense.

(7) Following the completion of the sale, the peace officer accompanying the person under 18 years of age shall reenter the retail establishment and shall inform the seller of the random inspection. Following an attempted sale, the enforcing agency shall notify the retail establishment of the inspection.

(8) Failure to comply with the procedures set forth in this subdivision shall be a defense to an action brought pursuant to this section.

(e) Be responsible for ensuring and reporting the state's compliance with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services. A copy of this report shall be made available to the Governor and the Legislature.

(f) Provide that any civil penalties imposed pursuant to Section 22958 shall be enforced against the owner or owners of the retail business and not the employees of the business.

(g) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2016.

SEC. 5. Section 22956 of the Business and Professions Code is amended to read:

22956. All persons engaging in the retail sale of tobacco products or electronic cigarettes shall check the identification of purchasers of those items, to establish the age of the purchaser, if the purchaser reasonably appears to be under 18 years of age.

SEC. 6. Section 22958 of the Business and Professions Code is amended to read:

22958. (a) An enforcing agency may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, any tobacco, cigarette, electronic cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, according to the following schedule: (1) a civil penalty of from four hundred dollars (\$400) to six hundred dollars (\$600) for the first violation, (2) a civil penalty of from nine hundred dollars (\$900) to one thousand dollars (\$1,000) for the second violation within a five-year period, (3) a civil penalty of from one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within a

1 five-year period, (4) a civil penalty of from three thousand dollars
2 (\$3,000) to four thousand dollars (\$4,000) for a fourth violation
3 within a five-year period, or (5) a civil penalty of from five
4 thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a
5 fifth violation within a five-year period.

6 (b) (1) In addition to the civil penalties described in subdivision
7 (a), upon the assessment of a civil penalty for the third, fourth, or
8 fifth violation, the department, within 60 days of the date of service
9 of the final administrative adjudication on the parties or payment
10 of the civil penalty for an uncontested violation, shall notify the
11 State Board of Equalization of the violation. The State Board of
12 Equalization shall then assess a civil penalty of two hundred fifty
13 dollars (\$250) and suspend or revoke a license issued pursuant to
14 Chapter 2 (commencing with Section 22972) of Division 8.6 in
15 accordance with the following schedule:

16 (A) A 45-day suspension of the license for a third violation at
17 the same location within a five-year period.

18 (B) A 90-day suspension of the license for a fourth violation at
19 the same location within a five-year period.

20 (C) Revocation of the license for a fifth violation at the same
21 location within a five-year period.

22 (2) The provisions of Chapter 4 (commencing with Section
23 55121) of Part 30 of Division 2 of the Revenue and Taxation Code
24 apply with respect to the collection of the penalty imposed by the
25 State Board of Equalization pursuant to paragraph (1).

26 (c) (1) For each suspension or revocation pursuant to
27 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
28 assessed pursuant to that subdivision, notwithstanding Section
29 22953, shall be deposited into the Cigarette and Tobacco Products
30 Compliance Fund established pursuant to Section 22990. Moneys
31 from that civil penalty deposited into this fund shall be made
32 available to the State Board of Equalization, upon appropriation
33 by the Legislature, for the purposes of meeting its duties under
34 subdivision (b).

35 (2) The department shall, upon request, provide to the State
36 Board of Equalization information concerning any person, firm,
37 or corporation that has been assessed a civil penalty for violation
38 of the STAKE Act pursuant to this section when the department
39 has notified the State Board of Equalization of the violation.

1 (d) The enforcing agency shall assess penalties pursuant to the
2 schedule set forth in subdivision (a) against a person, firm, or
3 corporation that sells, offers for sale, or distributes tobacco products
4 or electronic cigarettes from a cigarette or tobacco products vending
5 machine, or a person, firm, or corporation that leases, furnishes,
6 or services these machines in violation of Section 22960.

7 (e) An enforcing agency may assess civil penalties against a
8 person, firm, or corporation that sells or deals in tobacco or any
9 preparation thereof, and fails to post conspicuously and keep posted
10 in the place of business at each point of purchase the notice
11 required pursuant to subdivision (b) of Section 22952. The civil
12 penalty shall be in the amount of two hundred dollars (\$200) for
13 the first offense and five hundred dollars (\$500) for each additional
14 violation.

15 (f) An enforcing agency shall assess penalties in accordance
16 with the schedule set forth in subdivision (a) against a person, firm,
17 or corporation that advertises or causes to be advertised a tobacco
18 product or electronic cigarette on an outdoor billboard in violation
19 of Section 22961.

20 (g) If a civil penalty has been assessed pursuant to this section
21 against a person, firm, or corporation for a single, specific violation
22 of this division, the person, firm, or corporation shall not be
23 prosecuted under Section 308 of the Penal Code for a violation
24 based on the same facts or specific incident for which the civil
25 penalty was assessed. If a person, firm, or corporation has been
26 prosecuted for a single, specific violation of Section 308 of the
27 Penal Code, the person, firm, or corporation shall not be assessed
28 a civil penalty under this section based on the same facts or specific
29 incident upon which the prosecution under Section 308 of the Penal
30 Code was based.

31 (h) (1) In the case of a corporation or business with more than
32 one retail location, to determine the number of accumulated
33 violations for purposes of the penalty schedule set forth in
34 subdivision (a), violations of this division by one retail location
35 shall not be accumulated against other retail locations of that same
36 corporation or business.

37 (2) In the case of a retail location that operates pursuant to a
38 franchise as defined in Section 20001, violations of this division
39 accumulated and assessed against a prior owner of a single
40 franchise location shall not be accumulated against a new owner

1 of the same single franchise location for purposes of the penalty
2 schedule set forth in subdivision (a).

3 (i) Proceedings under this section shall be conducted pursuant
4 to Section 131071 of the Health and Safety Code, except in cases
5 where a civil penalty is assessed by an enforcing agency other than
6 the department, in which case proceedings shall be conducted
7 pursuant to the procedures of that agency that are consistent with
8 Section 131071 of the Health and Safety Code.

9 SEC. 7. Section 22960 of the Business and Professions Code
10 is amended to read:

11 22960. (a) Except as provided in subdivision (b), a cigarette,
12 electronic cigarette, or tobacco product shall not be sold, offered
13 for sale, or distributed from a vending machine or appliance, or
14 any other coin or token operated mechanical device designed or
15 used for vending purposes, including, but not limited to, machines
16 or devices that use remote control locking mechanisms.

17 (b) (1) Cigarette, electronic cigarette, or tobacco product
18 vending machines or appliances may be located at least 15 feet
19 away from the entrance of a premise issued an on-sale public
20 premises license as defined in Section 23039 by the Department
21 of Alcoholic Beverage Control to sell alcoholic beverages.

22 (2) As used in this subdivision “at least 15 feet away from the
23 entrance” means within the premises of the licensed establishment
24 and not outside those premises.

25 (c) This section and subdivision (b) of Section 22958 set forth
26 minimum state restrictions on the sale of cigarettes, electronic
27 cigarettes, or tobacco products from vending machines or devices
28 and do not preempt or otherwise prohibit the adoption of a local
29 standard that further restricts access to and reduces the availability
30 of cigarettes, electronic cigarettes, or tobacco products from
31 vending machines or devices or that imposes a complete ban on
32 the sale of cigarettes or tobacco products from vending machines
33 or devices. A local standard that further restricts or imposes a
34 complete ban on the sale of cigarettes, electronic cigarettes, or
35 tobacco products from vending machines or devices shall control
36 in the event of an inconsistency between this section and a local
37 standard.

38 (d) The amendments made to this section by the act adding this
39 subdivision shall become operative on July 1, 2016.

1 SEC. 8. Section 22961 of the Business and Professions Code
2 is amended to read:

3 22961. (a) No person, firm, corporation, partnership, or other
4 organization shall advertise or cause to be advertised any tobacco
5 products or electronic cigarettes on any outdoor billboard located
6 within 1,000 feet of any public or private elementary school, junior
7 high school, or high school, or public playground.

8 (b) This section sets forth minimum state restrictions on the
9 advertisement of any tobacco products or electronic cigarettes on
10 outdoor billboards near schools and public playgrounds and does
11 not preempt or otherwise prohibit the adoption of a local standard
12 that imposes a more restrictive or complete ban on billboard
13 advertising or on tobacco-related billboard advertising. A local
14 standard that imposes a more restrictive or complete ban on
15 billboard advertising or on tobacco-related billboard advertising
16 shall control in the event of any inconsistency between this section
17 and a local standard.

18 (c) This section shall not be construed to prohibit the display
19 of a message or advertisement opposing the use of tobacco products
20 or electronic cigarettes. However, this subdivision shall not be
21 construed to permit an advertisement promoting the use of tobacco
22 products or electronic cigarettes by including a message opposing
23 the use of tobacco products or electronic cigarettes within that
24 advertisement.

25 SEC. 9. Section 22962 of the Business and Professions Code
26 is amended to read:

27 22962. (a) For purposes of this section, the following terms
28 have the following meanings:

29 (1) “Self-service display” means the open display of electronic
30 cigarettes, tobacco products, or tobacco paraphernalia in a manner
31 that is accessible to the general public without the assistance of
32 the retailer or employee of the retailer.

33 (2) “Tobacco paraphernalia” means cigarette papers or wrappers,
34 blunt wraps as defined in Section 308 of the Penal Code, pipes,
35 holders of smoking materials of all types, cigarette rolling
36 machines, or other instruments or things designed for the smoking
37 or ingestion of tobacco products.

38 (3) “*Tobacco product*” means any product containing tobacco
39 leaf, including, but not limited to, cigarettes, cigars, pipe tobacco,

1 *snuff, chewing tobacco, dipping tobacco, bidis, or any other*
2 *preparation of tobacco.*

3 ~~(3)~~

4 (4) “Tobacco store” means a retail business that meets all of the
5 following requirements:

6 (A) Primarily sells tobacco products or electronic cigarettes.

7 (B) Generates more than 60 percent of its gross revenues
8 annually from the sale of electronic cigarettes, tobacco products,
9 and tobacco paraphernalia.

10 (C) Does not permit any person under 18 years of age to be
11 present or enter the premises at any time, unless accompanied by
12 the person’s parent or legal guardian, as defined in Section 6903
13 of the Family Code.

14 (D) Does not sell alcoholic beverages or food for consumption
15 on the premises.

16 (b) (1) (A) Except as permitted in subdivision (b) of Section
17 22960, it is unlawful for a person engaged in the retail sale of
18 tobacco products or electronic cigarettes to sell, offer for sale, or
19 display for sale any electronic cigarette, tobacco product, or tobacco
20 paraphernalia by self-service display. A person who violates this
21 section is subject to those civil penalties specified in the schedule
22 in subdivision (a) of Section 22958.

23 (B) A person who violates this section is subject to those civil
24 penalties specified in the schedule in subdivision (a) of Section
25 22958.

26 (2) It is unlawful for a person engaged in the retail sale of blunt
27 wraps to place or maintain, or to cause to be placed or maintained,
28 any blunt wraps advertising display within two feet of candy,
29 snack, or nonalcoholic beverage displayed inside any store or
30 business.

31 (3) It is unlawful for any person or business to place or maintain,
32 or cause to be placed or maintained, any blunt wrap advertising
33 display that is less than four feet above the floor.

34 (c) Subdivision (b) shall not apply to the display in a tobacco
35 store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping
36 tobacco, provided that in the case of cigars they are generally not
37 sold or offered for sale in a sealed package of the manufacturer or
38 importer containing less than six cigars. In any enforcement action
39 brought pursuant to this division, the retail business that displays
40 any of the items described in this subdivision in a self-service

1 display shall have the burden of proving that it qualifies for the
2 exemption established in this subdivision.

3 (d) The Attorney General, a city attorney, a county counsel, or
4 a district attorney may bring a civil action to enforce this section.

5 (e) This section does not preempt or otherwise prohibit the
6 adoption of a local standard that imposes greater restrictions on
7 the access to tobacco products or electronic cigarettes than the
8 restrictions imposed by this section. To the extent that there is an
9 inconsistency between this section and a local standard that
10 imposes greater restrictions on the access to tobacco products or
11 electronic cigarettes, the greater restriction on the access to tobacco
12 products or electronic cigarettes in the local standard shall prevail.

13 SEC. 10. Section 22963 of the Business and Professions Code
14 is amended to read:

15 22963. (a) The sale, distribution, or nonsale distribution of
16 tobacco products or electronic cigarettes directly or indirectly to
17 any person under the age of 18 years through the United States
18 Postal Service or through any other public or private postal or
19 package delivery service at locations, including, but not limited
20 to, public mailboxes and mailbox stores, is prohibited.

21 (b) Any person selling or distributing, or engaging in the nonsale
22 distribution of, tobacco products or electronic cigarettes directly
23 to a consumer in the state through the United States Postal Service
24 or by any other public or private postal or package delivery service,
25 including orders placed by mail, telephone, facsimile transmission,
26 or the Internet, shall comply with the following provisions:

27 (1) (A) Before enrolling a person as a customer, or distributing
28 or selling, or engaging in the nonsale distribution of, the tobacco
29 product or electronic cigarette through any of these means, the
30 distributor or seller shall verify that the purchaser or recipient of
31 the product is 18 years of age or older. The distributor or seller
32 shall attempt to match the name, address, and date of birth provided
33 by the customer to information contained in records in a database
34 of individuals whose age has been verified to be 18 years or older
35 by reference to an appropriate database of government records
36 kept by the distributor, a direct marketing firm, or any other entity.
37 In the case of a sale, the distributor or seller shall also verify that
38 the billing address on the check or credit card offered for payment
39 by the purchaser matches the address listed in the database.

(B) If the seller, distributor, or nonsale distributor, is unable to verify that the purchaser or recipient is 18 years of age or older pursuant to subparagraph (A), he or she shall require the customer or recipient to submit an age-verification kit consisting of an attestation signed by the customer or recipient that he or she is 18 years of age or older and a copy of a valid form of government identification. For the purposes of this section, a valid form of government identification includes a driver's license, state identification card, passport, an official naturalization or immigration document, such as an alien registration receipt card (commonly known as a "green card") or an immigrant visa, or military identification. In the case of a sale, the distributor or seller shall also verify that the billing address on the check or credit card provided by the consumer matches the address listed in the form of government identification.

(2) In the case of a sale, the distributor or seller shall impose a two-carton minimum on each order of cigarettes, and shall require payment for the purchase of any tobacco product or electronic cigarette to be made by personal check of the purchaser or the purchaser's credit card. No money order or cash payment shall be received or permitted. The distributor or seller shall submit to each credit card acquiring company with which it has credit card sales identification information in an appropriate form and format so that the words "tobacco product" or "electronic cigarette" may be printed in the purchaser's credit card statement when a purchase of a tobacco product or electronic cigarette is made by credit card payment.

(3) In the case of a sale, the distributor or seller shall make a telephone call after 5 p.m. to the purchaser confirming the order prior to shipping the tobacco products or electronic cigarettes. The telephone call may be a person-to-person call or a recorded message. The distributor or seller is not required to speak directly with a person and may leave a message on an answering machine or by voice mail.

(4) The nonsale distributor shall deliver the tobacco product or electronic cigarette to the recipient's verified mailing address, or in the case of a sale, the seller or distributor shall deliver the tobacco product or electronic cigarette to the purchaser's verified billing address on the check or credit card used for payment. No

1 delivery described under this section shall be permitted to any post
2 office box.

3 (c) Notwithstanding subdivisions (a) and (b), if a seller,
4 distributor, or nonsale distributor, complies with all of the
5 requirements of this section and a minor obtains a tobacco product
6 or electronic cigarette by any of the means described in subdivision
7 (b), the seller, distributor, or nonsale distributor is not in violation
8 of this section.

9 (d) For the purposes of the enforcement of this section pursuant
10 to Section 22958, the acts of the United States Postal Service or
11 other common carrier when engaged in the business of transporting
12 and delivering packages for others, and the acts of a person,
13 whether compensated or not, who transports or delivers a package
14 for another person without any reason to know of the package's
15 contents, are not unlawful and are not subject to civil penalties.

16 (e) (1) (A) For the purposes of this section, a "distributor" is
17 any person or entity, within or outside the state, who agrees to
18 distribute tobacco products or electronic cigarettes to a customer
19 or recipient within the state. The United States Postal Service or
20 any other public or private postal or package delivery service are
21 not distributors within the meaning of this section.

22 (B) A "nonsale distributor" is any person inside or outside of
23 this state who, directly or indirectly, knowingly provides tobacco
24 products or electronic cigarettes to any person in this state as part
25 of a nonsale transaction. "Nonsale distributor" includes the person
26 or entity who provides the tobacco product or electronic cigarette
27 for delivery and the person or entity who delivers the product to
28 the recipient as part of a nonsale transaction.

29 (C) "Nonsale distribution" means to give electronic cigarettes,
30 smokeless tobacco, or cigarettes to the general public at no cost,
31 or at nominal cost, or to give coupons, coupon offers, gift
32 certificates, gift cards, or other similar offers, or rebate offers for
33 electronic cigarettes, smokeless tobacco, or cigarettes to the general
34 public at no cost or at nominal cost. Distribution of electronic
35 cigarettes, tobacco products, coupons, coupon offers, gift
36 certificates, gift cards, or other similar offers, or rebate offers in
37 connection with the sale of another item, including electronic
38 cigarettes, tobacco products, cigarette lighters, magazines, or
39 newspapers shall not constitute nonsale distribution.

(2) For the purpose of this section, a “seller” is any person or entity, within or outside the state, who agrees to sell tobacco products or electronic cigarettes to a customer within the state. The United States Postal Service or any other public or private postal or package delivery service are not sellers within the meaning of this section.

(3) For the purpose of this section, a “carton” is a package or container that contains 200 cigarettes.

(f) A district attorney, city attorney, or the Attorney General may assess civil penalties against any person, firm, corporation, or other entity that violates this section, according to the following schedule:

(1) A civil penalty of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000) for the first violation.

(2) A civil penalty of not less than two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500) for the second violation.

(3) A civil penalty of not less than four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000) for the third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500) for the fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth or subsequent violation within a five-year period.

SEC. 11. Section 22970.2 of the Business and Professions Code is amended to read:

22970.2. The board shall administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products, and retailers of electronic cigarettes.

SEC. 12. Section 22971 of the Business and Professions Code is amended to read:

22971. For purposes of this division, the following terms shall have the following meanings:

(a) “Board” means the State Board of Equalization.

(b) “Brand family” has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

1 (c) (1) “Cigarette” means a cigarette as defined in Section 30003
2 of the Revenue and Taxation Code.

3 (2) “Electronic cigarette” means a device as defined in
4 subdivision ~~(d)~~ (c) of Section 22950.5.

5 (d) (1) “Control” or “controlling” means possession, direct or
6 indirect, of the power:

7 (A) To vote 25 percent or more of any class of the voting
8 securities issued by a person.

9 (B) To direct or cause the direction of the management and
10 policies of a person, whether through the ownership of voting
11 securities, by contract, other than a commercial contract for goods
12 or nonmanagement services, or as otherwise provided; however,
13 no individual shall be deemed to control a person solely on account
14 of being a director, officer, or employee of that person.

15 (2) For purposes of subparagraph (B) of paragraph (1), a person
16 who, directly or indirectly, owns, controls, holds, with the power
17 to vote, or holds proxies representing 10 percent or more of the
18 then outstanding voting securities issued by another person, is
19 presumed to control that other person.

20 (3) For purposes of this division, the board may determine
21 whether a person in fact controls another person.

22 (e) “Display for sale” means the placement of cigarettes,
23 electronic cigarettes, or tobacco products in a vending machine or
24 in retail stock for the purpose of selling or gifting the cigarettes,
25 electronic cigarettes, or tobacco products. For purposes of this
26 definition, the clear and easily visible display of cigarettes,
27 electronic cigarettes, or tobacco products shall create a rebuttable
28 presumption that the products were displayed for sale.

29 (f) “Distributor” means a distributor as defined in Section 30011
30 of the Revenue and Taxation Code.

31 (g) “Gifting” means any transfer of title or possession without
32 consideration, exchange, or barter, in any manner or by any means,
33 of cigarettes, electronic cigarettes, or tobacco products that have
34 been purchased for resale under a license issued pursuant to this
35 division if the transfer occurs while the license is suspended or
36 after the effective date of its revocation.

37 (h) “Importer” means an importer as defined in Section 30019
38 of the Revenue and Taxation Code.

39 (i) “Law enforcement agency” means a sheriff, a police
40 department, or a city, county, or city and county agency or

1 department designated by the governing body of that agency to
2 enforce this chapter or to enforce local smoking and tobacco
3 ordinances and regulations.

4 (j) “License” means a license issued by the board pursuant to
5 this division.

6 (k) “Licensee” means any person holding a license issued by
7 the board pursuant to this division.

8 (l) “Manufacturer” means a manufacturer of cigarettes;
9 ~~electronic cigarettes~~, or tobacco products sold in this state.

10 (m) “Notice” or “notification” means, unless as otherwise
11 provided, the written notice or notification provided to a licensee
12 by the board by either actual delivery to the licensee or by
13 first-class mail addressed to the licensee at the address on the
14 license.

15 (n) “Package of cigarettes” means a package as defined in
16 Section 30015 of the Revenue and Taxation Code.

17 (o) “Person” means a person as defined in Section 30010 of the
18 Revenue and Taxation Code.

19 (p) “Retailer” means a person who engages in this state in the
20 sale of cigarettes, electronic cigarettes, or tobacco products directly
21 to the public from a retail location. Retailer includes a person who
22 operates vending machines from which cigarettes, electronic
23 cigarettes, or tobacco products are sold in this state.

24 (q) “Retail location” means both of the following:

25 (1) Any building from which cigarettes, electronic cigarettes,
26 or tobacco products are sold at retail.

27 (2) A vending machine.

28 (r) “Sale” or “sold” means a sale as defined in Section 30006
29 of the Revenue and Taxation Code.

30 (s) “Tobacco products” means tobacco products as defined in
31 subdivision (b) of Section 30121 and subdivision (b) of Section
32 30131.1 of the Revenue and Taxation Code.

33 (t) “Unstamped package of cigarettes” means a package of
34 cigarettes that does not bear a tax stamp as required under Part 13
35 (commencing with Section 30001) of Division 2 of the Revenue
36 and Taxation Code, including a package of cigarettes that bears a
37 tax stamp of another state or taxing jurisdiction, a package of
38 cigarettes that bears a counterfeit tax stamp, or a stamped or
39 unstamped package of cigarettes that is marked “Not for sale in
40 the United States.”

1 (u) “Wholesaler” means a wholesaler as defined in Section
2 30016 of the Revenue and Taxation Code.

3 SEC. 13. Section 22972 of the Business and Professions Code
4 is amended to read:

5 22972. (a) A retailer shall have in place and maintain a license
6 to engage in the sale of cigarettes, electronic cigarettes, or tobacco
7 products. A retailer that owns or controls more than one retail
8 location shall obtain a separate license for each retail location, but
9 may submit a single application for those licenses.

10 (b) The retailer shall conspicuously display the license at each
11 retail location in a manner visible to the public.

12 (c) A license is not assignable or transferable. A person who
13 obtains a license as a retailer who ceases to do business as specified
14 in the license, or who never commenced business, or whose license
15 is suspended or revoked, shall immediately surrender the license
16 to the board.

17 (d) A license shall be valid for a 12-month period, and shall be
18 renewed annually.

19 (e) The amendments made to this section by the act adding this
20 subdivision *that require the licensure of a retail seller of electronic*
21 *cigarettes* shall become operative on ~~June 30, 2016~~ *September*
22 *30, 2016*.

23 SEC. 14. Section 22973 of the Business and Professions Code
24 is amended to read:

25 22973. (a) An application for a license shall be filed on a form
26 prescribed by the board and shall include the following:

27 (1) The name, address, and telephone number of the applicant.

28 (2) The business name, address, and telephone number of each
29 retail location. For applicants who control more than one retail
30 location, an address for receipt of correspondence or notices from
31 the board, such as a headquarters or corporate office of the retailer,
32 shall also be included on the application and listed on the license.
33 Citations issued to licensees shall be forwarded to all addressees
34 on the license.

35 (3) A statement by the applicant affirming that the applicant
36 has not been convicted of a felony and has not violated and will
37 not violate or cause or permit to be violated any of the provisions
38 of this division or any rule of the board applicable to the applicant
39 or pertaining to the manufacture, sale, or distribution of cigarettes;
40 ~~electronic cigarettes~~, or tobacco products, *or manufacture or sale*

1 *of electronic cigarettes*. If the applicant is unable to affirm this
2 statement, the application shall contain a statement by the applicant
3 of the nature of any violation or the reasons that will prevent the
4 applicant from complying with the requirements with respect to
5 the statement.

6 (4) If any other licenses or permits have been issued by the
7 board or the Department of Alcoholic Beverage Control to the
8 applicant, the license or permit number of those licenses or permits
9 then in effect.

10 (5) A statement by the applicant that the contents of the
11 application are complete, true, and correct. Any person who signs
12 a statement pursuant to this subdivision that asserts the truth of
13 any material matter that he or she knows to be false is guilty of a
14 misdemeanor punishable by imprisonment of up to one year in the
15 county jail, or a fine of not more than one thousand dollars
16 (\$1,000), or both the imprisonment and the fine.

17 (6) The signature of the applicant.

18 (7) Any other information the board may require.

19 (b) The board may investigate to determine the truthfulness and
20 completeness of the information provided in the application. The
21 board may issue a license without further investigation to an
22 applicant for a retail location if the applicant holds a valid license
23 from the Department of Alcoholic Beverage Control for that same
24 location.

25 (c) The board shall provide electronic means for applicants to
26 download and submit applications.

27 (d) (1) A one-time license fee of one hundred dollars (\$100)
28 shall be submitted with each application. An applicant that owns
29 or controls more than one retail location shall obtain a separate
30 license for each retail location, but may submit a single application
31 for those licenses with a one-time license fee of one hundred dollars
32 (\$100) per location.

33 (2) The one-time fee required by this subdivision does not apply
34 to an application for renewal of a license for a retail location for
35 which the one-time license fee has already been paid. If a license
36 is reinstated after its expiration, the retailer, as a condition
37 precedent to its reinstatement, shall pay a reinstatement fee of one
38 hundred dollars (\$100).

1 ~~(3) The one-time fee required by this subdivision does not apply~~
2 ~~to a retail location selling electronic cigarettes if the retail location~~
3 ~~has already obtained a license to sell cigarettes or tobacco products.~~

4 (e) The amendments made to this section by the act adding this
5 subdivision shall become operative on ~~April 15, 2016.~~ *July 1, 2016.*

6 SEC. 15. Section 22974 of the Business and Professions Code
7 is amended to read:

8 22974. A retailer shall retain purchase invoices that meet the
9 requirements set forth in Section 22978.4 for all cigarettes;
10 ~~electronic cigarettes~~, or tobacco products the retailer purchased
11 for a period of four years. The records shall be kept at the retail
12 location for at least one year after the purchase. Invoices shall be
13 made available upon request during normal business hours for
14 review inspection and copying by the board or by a law
15 enforcement agency. Any retailer found in violation of these
16 requirements or any person who fails, refuses, or neglects to retain
17 or make available invoices for inspection and copying in
18 accordance with this section shall be subject to penalties pursuant
19 to Section 22981.

20 SEC. 16. Section 22974.7 of the Business and Professions
21 Code is amended to read:

22 22974.7. In addition to any other civil or criminal penalty
23 provided by law, upon a finding that a retailer has violated any
24 provision of this division, the board may take the following actions:

25 (a) In the case of the first offense, the board may revoke or
26 suspend the license or licenses of the retailer pursuant to the
27 procedures applicable to the revocation of a license set forth in
28 Section 30148 of the Revenue and Taxation Code.

29 (b) In the case of a second or any subsequent offense, in addition
30 to the action authorized under subdivision (a), the board may
31 impose a civil penalty in an amount not to exceed the greater of
32 either of the following:

33 (1) Five times the retail value of the seized cigarettes, electronic
34 cigarettes, or tobacco products.

35 (2) Five thousand dollars (\$5,000).

36 SEC. 17. Section 22980 of the Business and Professions Code
37 is amended to read:

38 22980. (a) (1) Any peace officer, or board employee granted
39 limited peace officer status pursuant to paragraph (6) of subdivision

40 (a) of Section 830.11 of the Penal Code, upon presenting

1 appropriate credentials, is authorized to enter any place as described
2 in paragraph (3) and to conduct inspections in accordance with the
3 following paragraphs, inclusive.

4 (2) Inspections shall be performed in a reasonable manner and
5 at times that are reasonable under the circumstances, taking into
6 consideration the normal business hours of the place to be entered.

7 (3) Inspections may be at any place at which cigarettes,
8 electronic cigarettes, or tobacco products are sold, produced, or
9 stored or at any site where evidence of activities involving evasion
10 of cigarette or tobacco products tax and violations of Section
11 30165.1 of the Revenue and Taxation Code may be discovered.

12 (4) Inspections shall be requested or conducted no more than
13 once in a 24-hour period.

14 (b) Any person that refuses to allow an inspection shall be
15 subject to the penalties imposed pursuant to Section 22981.

16 SEC. 18. Section 22980.1 of the Business and Professions
17 Code is amended to read:

18 22980.1. (a) ~~No~~A manufacturer or importer shall *not* sell
19 cigarettes, ~~electronic cigarettes~~, or tobacco products to a distributor,
20 wholesaler, retailer, or any other person who is not licensed
21 pursuant to this division or whose license has been suspended or
22 revoked.

23 (b) (1) Except as provided in paragraph (2), no distributor or
24 wholesaler shall sell cigarettes, ~~electronic cigarettes~~, or tobacco
25 products to a retailer, wholesaler, distributor, or any other person
26 who is not licensed pursuant to this division or whose license has
27 been suspended or revoked.

28 (2) This subdivision does not apply to any sale of cigarettes;
29 ~~electronic cigarettes~~, or tobacco products by a distributor,
30 wholesaler, or any other person to a retailer, wholesaler, distributor,
31 or any other person that the state, pursuant to the United States
32 Constitution, the laws of the United States, or the California
33 Constitution, is prohibited from regulating.

34 (c) No retailer, distributor, or wholesaler shall purchase packages
35 of cigarettes or tobacco products from a manufacturer or importer
36 who is not licensed pursuant to this division or whose license has
37 been suspended or revoked.

38 (d) (1) No retailer, or wholesaler shall purchase cigarettes;
39 ~~electronic cigarettes~~, or tobacco products from any person who is

1 not licensed pursuant to this division or whose license has been
2 suspended or revoked.

3 (2) Notwithstanding subdivision (c), no distributor shall purchase
4 cigarettes, ~~electronic cigarettes~~, or tobacco products from any
5 person who is required to be licensed pursuant to this division but
6 who is not licensed or whose license has been suspended or
7 revoked.

8 (e) Each separate sale to, or by, a retailer, wholesaler, distributor,
9 importer, manufacturer, or any other person who is not licensed
10 pursuant to this division shall constitute a separate violation.

11 (f) ~~No~~A manufacturer, distributor, wholesaler, or importer ~~may~~
12 ~~shall not~~ sell cigarettes, ~~electronic cigarettes~~, or tobacco products
13 to any retailer or wholesaler whose license has been suspended or
14 revoked unless all outstanding debts of that retailer or wholesaler
15 that are owed to a wholesaler or distributor for cigarettes, ~~electronic~~
16 ~~cigarettes~~, or tobacco products are paid and the license of that
17 retailer or wholesaler has been reinstated by the board. Any
18 payment received from a retailer or wholesaler shall be credited
19 first to the outstanding debt for cigarettes, ~~electronic cigarettes~~, or
20 tobacco products and must be immediately reported to the board.
21 The board shall determine the debt status of a suspended retailer
22 or wholesaler licensee 25 days prior to the reinstatement of the
23 license.

24 (g) No importer, distributor, or wholesaler, or distributor
25 functioning as a wholesaler, or retailer, shall purchase, obtain, or
26 otherwise acquire any package of cigarettes to which a stamp or
27 meter impression may not be affixed in accordance with
28 subdivision (b) of Section 30163 or subdivision (e) of Section
29 30165.1 of the Revenue and Taxation Code, or any cigarettes
30 obtained from a manufacturer or importer that cannot demonstrate
31 full compliance with all requirements of the federal Cigarette
32 Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for
33 the reporting of ingredients added to cigarettes.

34 (h) (1) Failure to comply with the provisions of this section
35 shall be a misdemeanor subject to penalties pursuant to Section
36 22981.

37 (2) Notwithstanding paragraph (1), a manufacturer or importer
38 who uses the most up-to-date licensing information provided by
39 the board on the board's Internet Web site to determine a person's
40 licensing status is presumed to be in compliance with this section.

(i) ~~The amendments that are made to this section by the act adding this subdivision shall become operative May 1, 2007.~~

SEC. 19. Section 22980.2 of the Business and Professions Code is amended to read:

22980.2. (a) A person or entity that engages in the business of selling cigarettes, ~~electronic cigarettes~~, or tobacco products in this state, *or a retailer that engages in the business of selling cigarettes, electronic cigarettes, or tobacco products in this state*, either without a valid license or after a license has been suspended or revoked, and each officer of any corporation that so engages in this business, is guilty of a misdemeanor punishable as provided in Section 22981.

(b) (1) Each day after notification by the board or by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed under this division offers cigarettes, ~~electronic cigarettes~~, and tobacco products for sale or exchange without a valid license for the location from which they are offered for sale shall constitute a separate violation.

(2) *Each day after notification by the board or by a law enforcement agency that a retailer offers electronic cigarettes for sale or exchange without a valid license for the location from which they are offered for sale shall constitute a separate violation.*

(c) (1) Continued sales or gifting of cigarettes, ~~electronic cigarettes~~, and tobacco products either without a valid license or after a notification of suspension or revocation shall constitute a violation punishable as provided in Section 22981, and shall result in the seizure of all cigarettes, ~~electronic cigarettes~~, and tobacco products in the possession of the person by the board or a law enforcement agency. Any cigarettes, ~~electronic cigarettes~~, and tobacco products seized by the board or by a law enforcement agency shall be deemed forfeited.

(2) *Continued sale or gifting of electronic cigarettes by a retailer either without a valid license or after a notification of suspension or revocation shall constitute a violation punishable as provided in Section 22981, and shall result in the seizure of all electronic cigarettes in the possession of the person by the board or a law enforcement agency. Any electronic cigarettes seized by the board or by a law enforcement agency shall be forfeited.*

1 SEC. 20. Section 22980.3 of the Business and Professions
2 Code is amended to read:

3 22980.3. (a) Licenses issued pursuant to this division shall be
4 subject to suspension or revocation for violations of this division
5 or the Revenue and Taxation Code as provided in this section.

6 (1) In addition to any applicable fines or penalties for a violation,
7 upon first conviction of a violation, a licensee shall receive a
8 written notice from the board detailing the suspension and
9 revocation provisions of this division. At its discretion, the board
10 may also suspend a license for up to 30 days.

11 (2) In addition to any applicable fines or penalties for a violation,
12 upon a second conviction of a violation within four years of a
13 previous violation, the license shall be revoked.

14 (b) The date of the occurrence of a violation shall be used to
15 calculate the duration between subsequent violations. A violation
16 shall be noted in the license record at the board only after judicial
17 conviction or final adjudication of a violation.

18 (c) Upon updating a record for a violation triggering a
19 suspension, the board shall serve the licensee with a notice of
20 suspension and shall order the licensee to cease the sale, gifting,
21 or displaying for sale of cigarettes, ~~electronic cigarettes~~, or tobacco
22 products for the period of the suspension, *and in the case of a*
23 *licensee that is a retailer, shall also order the retailer to cease the*
24 *sale, gifting, or displaying for sale of electronic cigarettes, for the*
25 *period of the suspension*. The notice of suspension shall inform
26 the licensee of the effective dates of the suspension.

27 (d) Continued sales or gifting of cigarettes, ~~electronic cigarettes~~,
28 or tobacco products, *or electronic cigarettes in the case of a*
29 *retailer*, after the effective date of the suspension shall constitute
30 a violation of this division and result in the revocation of a license.

31 (e) Upon completion of a suspension period, a license shall be
32 reinstated by the board upon certification that all outstanding debts
33 of that retailer or wholesaler that are owed to a wholesaler or
34 distributor for the purchase of cigarettes, ~~electronic cigarettes~~, and
35 tobacco products are paid.

36 (f) Upon updating a record for a violation triggering a
37 revocation, the board shall serve the licensee with a notice of
38 revocation and shall order the licensee to cease the sale, gifting,
39 or displaying for sale of cigarettes, ~~electronic cigarettes~~, or tobacco
40 products, *and in the case of a licensee that is a retailer, shall also*

1 *order the retailer to cease the sale, gifting, or displaying for sale*
2 *of electronic cigarettes,* on and after the effective date of the
3 revocation. The notice of revocation shall inform the licensee of
4 the effective date of the revocation.

5 (g) After a revocation, a previously licensed applicant may apply
6 for a new license after six months. The board may, at its discretion,
7 issue a new license.

8 (h) Upon updating a license record for a violation, suspension,
9 or revocation to a license of a person or entity that owns or controls
10 more than one location, the board shall send notice in writing of
11 the violations, suspensions, or revocations within 15 days of the
12 board's action to the address included in the application and listed
13 on the license for receipt of correspondence or notices from the
14 board.

15 (i) Upon suspension or revocation of a license pursuant to this
16 section, the board shall notify all licensed distributors and
17 wholesalers by electronic mail within 48 hours of the suspension
18 or revocation of that license. All licensed distributors and
19 wholesalers shall provide the board and shall update, as necessary,
20 an electronic mail address that the board can use for purposes of
21 making the notifications required by this subdivision.

22 (j) Violations by a licensee at one location may not be
23 accumulated against other locations of that same licensee.
24 Violations accumulated against a prior owner at a licensed location
25 may not be accumulated against a new owner at the same licensed
26 location.

27 (k) For purposes of this section, a violation includes violations
28 of the Revenue and Taxation Code relating to cigarettes and
29 tobacco products, and violations of this division. Only one violation
30 per discrete action shall be counted toward a suspension or
31 revocation of a license.

32 SEC. 21. Section 22980.4 of the Business and Professions
33 Code is amended to read:

34 22980.4. A person who, after receiving a notice of suspension
35 or revocation, continues to display for sale cigarettes,~~electronic~~
36 ~~cigarettes,~~ or tobacco products, *or in the case of a retailer also*
37 *continues to display for sale electronic cigarettes,* shall be subject
38 to a civil penalty of one thousand dollars (\$1,000) for each offense,
39 and shall not be subject to Section 22981.

40 SEC. 22. *Section 1947.5 of the Civil Code is amended to read:*

1 1947.5. (a) A landlord of a residential dwelling unit, as defined
2 in Section 1940, or his or her agent, may prohibit the smoking of
3 a cigarette, as defined in Section 104556 of the Health and Safety
4 Code, or other tobacco product, *or using an electronic cigarette,*
5 *as defined in subdivision (c) of Section 22950.5 of the Business*
6 *and Professions Code*, on the property or in any building or portion
7 of the building, including any dwelling unit, other interior or
8 exterior area, or the premises on which it is located, in accordance
9 with this article.

10 (b) (1) Every lease or rental agreement entered into on or after
11 January 1, 2012, for a residential dwelling unit on property on any
12 portion of which the landlord has prohibited the smoking of
13 cigarettes or other tobacco products, *or using an electronic*
14 *cigarette*, pursuant to this article shall include a provision that
15 specifies the areas on the property where smoking is prohibited,
16 *or using an electronic cigarette is prohibited*, if the lessee has not
17 previously occupied the dwelling unit.

18 (2) For a lease or rental agreement entered into before January
19 1, 2012, a prohibition against the smoking of cigarettes or other
20 tobacco products, *or using an electronic cigarette*, in any portion
21 of the property in which smoking *or using an electronic cigarette*
22 was previously permitted shall constitute a change of the terms of
23 tenancy, requiring adequate notice in writing, to be provided in
24 the manner prescribed in Section 827.

25 (c) A landlord who exercises the authority provided in
26 subdivision (a) to prohibit smoking *or using an electronic cigarette*
27 shall be subject to federal, state, and local requirements governing
28 changes to the terms of a lease or rental agreement for tenants with
29 leases or rental agreements that are in existence at the time that
30 the policy limiting or prohibiting smoking *or using an electronic*
31 *cigarette* is adopted.

32 (d) This section shall not be construed to preempt any local
33 ordinance in effect on or before January 1, 2012, or any provision
34 of a local ordinance in effect on or after January 1, 2012, that
35 restricts the smoking of cigarettes or other tobacco products, *or*
36 *using an electronic cigarette*.

37 (e) A limitation or prohibition of the use of any tobacco product
38 *or the use of an electronic cigarette* shall not affect any other term
39 or condition of the tenancy, nor shall this section be construed to

1 require statutory authority to establish or enforce any other lawful
2 term or condition of the tenancy.

3 *SEC. 23. Section 48901 of the Education Code is amended to*
4 *read:*

5 48901. (a) ~~No~~A school shall *not* permit the smoking or use
6 of tobacco, or any product containing tobacco or nicotine products,
7 *or using an electronic cigarette as defined in subdivision (c) of*
8 *Section 22950.5 of the Business and Professions Code*, by pupils
9 of the school while the pupils are on campus, or while attending
10 school-sponsored activities or while under the supervision and
11 control of school district employees.

12 (b) The governing board of any school district maintaining a
13 high school shall take all steps it deems practical to discourage
14 high school students from smoking *or from using an electronic*
15 *cigarette.*

16 *SEC. 24. Section 7597 of the Government Code is amended to*
17 *read:*

18 7597. (a) ~~No~~A public employee or member of the public shall
19 *not* smoke any tobacco product, *or use an electronic cigarette as*
20 *defined in subdivision (c) of Section 22950.5 of the Business and*
21 *Professions Code*, inside a public building, or in an outdoor area
22 within 20 feet of a main exit, entrance, or operable window of a
23 public building, or in a passenger vehicle, as defined by Section
24 465 of the Vehicle Code, owned by the state.

25 (b) This section ~~shall~~ *does not* preempt the authority of any
26 county, city, city and county, California Community College
27 campus, campus of the California State University, or campus of
28 the University of California to adopt and enforce additional
29 smoking and tobacco control, *and electronic cigarette*, ordinances,
30 regulations, or policies that are more restrictive than the applicable
31 standards required by this chapter.

32 *SEC. 25. Section 1234 of the Health and Safety Code is*
33 *amended to read:*

34 1234. (a) Smoking ~~shall not be permitted~~, *or using an*
35 *electronic cigarette as defined in subdivision (c) of Section 22950.5*
36 *of the Business and Professions Code*, *is prohibited* in patient areas
37 of a clinic except those rooms designated for occupancy exclusively
38 by smokers.

39 (b) Clearly legible signs shall either:

1 (1) State that smoking, *or using an electronic cigarette*, is
2 unlawful and be conspicuously posted by, or on behalf of, the
3 owner or manager of such clinic, in all areas of a clinic where
4 smoking, *or using an electronic cigarette*, is unlawful.

5 (2) Identify “smoking permitted” areas, and be posted by, or
6 on behalf of, the owner or manager of such clinic, only in areas of
7 a clinic where smoking, *or using an electronic cigarette*, is lawfully
8 permitted.

9 If “smoking permitted” signs are posted, there shall also be
10 conspicuously posted, near all major entrances, clearly legible
11 signs stating that smoking, *or using an electronic cigarette*, is
12 unlawful except in areas designated “smoking permitted.”

13 (c) This section shall not apply to skilled nursing facilities,
14 intermediate care facilities, and intermediate care facilities for the
15 developmentally disabled.

16 SEC. 26. Section 1286 of the Health and Safety Code is
17 amended to read:

18 1286. (a) Smoking ~~shall be~~, *or using an electronic cigarette*
19 *as defined in subdivision (c) of Section 22950.5 of the Business*
20 *and Professions Code*, is prohibited in patient care areas, waiting
21 rooms, and visiting rooms of a health facility, except those areas
22 specifically designated as smoking areas, and in patient rooms as
23 specified in subdivision (b).

24 (b) Smoking, *or using an electronic cigarette*, shall not be
25 permitted in a patient room unless all persons assigned to such
26 room have requested a room where smoking, *or using an electronic*
27 *cigarette*, is permitted. In the event that the health facility
28 occupancy has reached capacity, the health facility shall have
29 reasonable time to reassign patients to appropriate rooms.

30 (c) Clearly legible signs shall either:

31 (1) State that smoking, *or using an electronic cigarette*, is
32 unlawful and be conspicuously posted by, or on behalf of, the
33 owner or manager of such health facility, in all areas of a health
34 facility where smoking, *or using an electronic cigarette*, is
35 unlawful, or

36 (2) Identify “smoking permitted” areas, and be posted by, or
37 on behalf of, the owner or manager of such health facility, only in
38 areas of the health facility where smoking, *or using an electronic*
39 *cigarette*, is lawfully permitted.

1 If “smoking permitted” signs are posted, there shall also be
2 conspicuously posted, near all major entrances, clearly legible
3 signs stating that smoking, *or using an electronic cigarette*, is
4 unlawful except in areas designated “smoking permitted.”

5 (d) No signs pertaining to smoking, *or using an electronic*
6 *cigarette*, are required to be posted in patient rooms.

7 (e) This section shall not apply to skilled nursing facilities,
8 intermediate care facilities, and intermediate care facilities for the
9 developmentally disabled.

10 *SEC. 27. Section 1530.7 of the Health and Safety Code is*
11 *amended to read:*

12 1530.7. (a) Group homes, foster family agencies, small family
13 homes, transitional housing placement providers, and crisis
14 nurseries licensed pursuant to this chapter shall maintain a
15 smoke-free environment, *and an environment free of electronic*
16 *cigarettes as defined in subdivision (c) of Section 22950.5 of the*
17 *Business and Professions Code*, in the facility.

18 (b) A person who is licensed or certified pursuant to this chapter
19 to provide residential care in a foster family home or certified
20 family home shall not smoke, *or use an electronic cigarette*, or
21 permit any other person to smoke, *or use an electronic cigarette*,
22 inside the facility, and, when the child is present, on the outdoor
23 grounds of the facility.

24 (c) A person who is licensed or certified pursuant to this chapter
25 to provide residential foster care shall not smoke, *or use an*
26 *electronic cigarette*, in any motor vehicle that is regularly used to
27 transport the child.

28 *SEC. 28. Section 1596.795 of the Health and Safety Code is*
29 *amended to read:*

30 1596.795. (a) The smoking of tobacco, *or use of an electronic*
31 *cigarette as defined in subdivision (c) of Section 22950.5 of the*
32 *Business and Professions Code*, in a private residence that is
33 licensed as a family day care home ~~shall be~~ is prohibited in the
34 home and in those areas of the family day care home where
35 children are present. Nothing in this section shall prohibit a city
36 or county from enacting or enforcing an ordinance relating to
37 smoking, *or using an electronic cigarette*, in a family day care
38 home if the ordinance is more stringent than this section.

39 (b) The smoking of tobacco, *or using an electronic cigarette*,
40 on the premises of a licensed day care center ~~shall be~~ is prohibited.

1 SEC. 29. Section 104495 of the Health and Safety Code is
2 amended to read:

3 104495. (a) For the purposes of this section, the following
4 definitions shall govern:

5 (1) "Playground" means any park or recreational area
6 specifically designed to be used by children that has play equipment
7 installed, or any similar facility located on public or private school
8 grounds, or on city, county, or state park grounds.

9 (2) "Tot lot sandbox area" means a designated play area within
10 a public park for the use by children under five years of age. Where
11 the area is not contained by a fence, the boundary of a tot lot
12 sandbox area shall be defined by the edge of the resilient surface
13 of safety material, such as concrete or wood, or any other material
14 surrounding the tot lot sandbox area.

15 (3) "Public park" includes a park operated by a public agency.

16 (4) "Smoke or smoking" means the carrying of a lighted pipe,
17 lighted cigar, or lighted cigarette of any kind, or the lighting of a
18 pipe, cigar, or cigarette of any kind, including, but not limited to,
19 tobacco, or any other weed or plant.

20 (5) "Cigarette" means the same as defined in Section 104556.

21 (6) "Cigar" means the same as defined in Section 104550.

22 (b) No person shall smoke a cigarette, cigar, or other
23 tobacco-related product, *or use an electronic cigarette as defined*
24 *in subdivision (c) of Section 22950.5 of the Business and*
25 *Professions Code*, within 25 feet of any playground or tot lot
26 sandbox area.

27 (c) No person shall dispose of cigarette butts, cigar butts, or
28 any other tobacco-related waste, *or an electronic cigarette or*
29 *related waste*, within 25 feet of a playground or a tot lot sandbox
30 area.

31 (d) No person shall intimidate, threaten any reprisal, or effect
32 any reprisal, for the purpose of retaliating against another person
33 who seeks to attain compliance with this section.

34 (e) Any person who violates this section is guilty of an
35 infraction and shall be punished by a fine of two hundred fifty
36 dollars (\$250) for each violation of this section. Punishment under
37 this section shall not preclude punishment pursuant to Section
38 13002, Section 374.4 of the Penal Code, or any other provision of
39 law proscribing the act of littering.

(f) The prohibitions contained in subdivisions (b), (c), and (d) shall not apply to private property.

(g) The prohibitions contained in subdivisions (b) and (c) shall not apply to a public sidewalk located within 25 feet of a playground or a tot lot sandbox area.

(h) This section ~~shall~~ *does* not preempt the authority of any county, city, or city and county to regulate smoking, *or the use of an electronic cigarette*, around playgrounds or tot lot sandbox areas. Any county, city, or city and county may enforce any ordinance adopted prior to January 1, 2002, or may adopt and enforce new regulations that are more restrictive than this section, on and after January 1, 2002.

SEC. 30. Section 113953.3 of the Health and Safety Code is amended to read:

113953.3. (a) Except as specified in subdivision (b), all employees shall thoroughly wash their hands and that portion, if any, of their arms exposed to direct food contact with cleanser and warm water by vigorously rubbing together the surfaces of their lathered hands and arms for at least 10 to 15 seconds and thoroughly rinsing with clean running water followed by drying of cleaned hands and that portion, if any, of their arms exposed. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers. Employees shall wash their hands in all of the following instances:

(1) Immediately before engaging in food preparation, including working with nonprepackaged food, clean equipment and utensils, and unwrapped single-use food containers and utensils.

(2) After touching bare human body parts other than clean hands and clean, exposed portions of arms.

(3) After using the toilet room.

(4) After caring for or handling any animal allowed in a food facility pursuant to this part.

(5) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, *using an electronic cigarette as defined in subdivision (c) of Section 22950.5 of the Business and Professions Code*, eating, or drinking.

(6) After handling soiled equipment or utensils.

(7) During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks.

(8) When switching between working with raw food and working with ready-to-eat food.

(9) Before initially donning gloves for working with food.

(10) Before dispensing or serving food or handling clean tableware and serving utensils in the food service area.

(11) After engaging in other activities that contaminate the hands.

(b) If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands.

SEC. 31. Section 113977 of the Health and Safety Code is amended to read:

113977. (a) Except as specified in subdivision (b), an employee shall eat, drink, ~~or~~ use any form of tobacco, *or use an electronic cigarette as defined in subdivision (c) of Section 22950.5 of the Business and Professions Code*, only in designated areas where contamination of nonprepackaged food; clean equipment, utensils, and linens; unwrapped single-use articles; or other items needing protection cannot result.

(b) A food employee may drink from a closed beverage container if the container is handled to prevent contamination of the employee's hands, the container, nonprepackaged food, and food-contact surfaces.

SEC. 32. Section 113978 of the Health and Safety Code is amended to read:

113978. Food facilities shall have a ~~“no smoking” sign~~ *sign that states both “no smoking” and “no using electronic cigarettes”* posted in the food preparation, food storage, and warewashing areas.

SEC. 33. Section 114332.3 of the Health and Safety Code is amended to read:

114332.3. (a) ~~No~~ A potentially hazardous food or beverage stored or prepared in a private home ~~may~~ *shall not* be offered for sale, sold, or given away from a nonprofit charitable temporary food facility. Potentially hazardous food shall be prepared in a food establishment or on the premises of a nonprofit charitable temporary food facility.

1 (b) All food and beverage shall be protected at all times from
2 unnecessary handling and shall be stored, displayed, and served
3 so as to be protected from contamination.

4 (c) Potentially hazardous food and beverage shall be maintained
5 at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or
6 above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times.

7 (d) Ice used in beverages shall be protected from contamination
8 and shall be maintained separate from ice used for refrigeration
9 purposes.

10 (e) All food and food containers shall be stored off the floor on
11 shelving or pallets located within the facility.

12 (f) Smoking, *or using an electronic cigarette as defined in*
13 *subdivision (c) of Section 22950.5 of the Business and Professions*
14 *Code*, is prohibited in nonprofit charitable temporary food facilities.

15 (g) (1) Except as provided in paragraph (2), live animals, birds,
16 or fowl shall not be kept or allowed in nonprofit charitable
17 temporary food facilities.

18 (2) Paragraph (1) does not prohibit the presence, in any room
19 where food is served to the public, guests, or patrons, of a guide
20 dog, signal dog, or service dog, as defined by Section 54.1 of the
21 Civil Code, accompanied by a totally or partially blind person,
22 deaf person, person whose hearing is impaired, or handicapped
23 person, or dogs accompanied by persons licensed to train guide
24 dogs for the blind pursuant to Chapter 9.5 (commencing with
25 Section 7200) of Division 3 of the Business and Professions Code.

26 (3) Paragraph (1) does not apply to dogs under the control of
27 uniformed law enforcement officers or of uniformed employees
28 of private patrol operators and operators of a private patrol service
29 who are licensed pursuant to Chapter 11.5 (commencing with
30 Section 7580) of Division 3 of the Business and Professions Code,
31 while these employees are acting within the course and scope of
32 their employment as private patrol persons.

33 (4) The persons and operators described in paragraphs (2) and
34 (3) are liable for any damage done to the premises or facilities by
35 the dog.

36 (5) The dogs described in paragraphs (2) and (3) shall be
37 excluded from food preparation and utensil wash areas. Aquariums
38 and aviaries shall be allowed if enclosed so as not to create a public
39 health problem.

40 (h) All garbage shall be disposed of in a sanitary manner.

1 (i) Employees preparing or handling food shall wear clean
2 clothing and shall keep their hands clean at all times.

3 *SEC. 34. Section 114371 of the Health and Safety Code is*
4 *amended to read:*

5 114371. Certified farmers' markets shall meet all of the
6 following requirements:

7 (a) All food shall be stored at least six inches off the floor or
8 ground or under any other conditions that are approved. Tents,
9 canopies, or other overhead coverings are not required for fresh
10 whole produce sales displays or storage, except when specifically
11 required pursuant to this chapter. Flavored nuts and dried fruits
12 that are being sold on a bulk or nonprepackaged basis shall be
13 displayed and dispensed by the producer from covered containers.
14 All processed food products being sold shall be in compliance with
15 Section 113735 and the applicable provisions of Section 110460,
16 114365, or 114365.2.

17 (b) Food preparation is prohibited at certified farmers' markets
18 with the exception of food samples. Trimming whole produce for
19 sale shall not be considered food preparation. Distribution of food
20 samples may occur provided that the following sanitary conditions
21 exist:

22 (1) Samples shall be kept in clean, nonabsorbent, and covered
23 containers intended by the manufacturer for use with foods. Any
24 cutting or distribution of samples shall only occur under a tent,
25 canopy, or other overhead covering.

26 (2) All food samples shall be distributed by the producer in a
27 manner that is sanitary and in which each sample is distributed
28 without the possibility of a consumer touching the remaining
29 samples.

30 (3) Clean, disposable plastic gloves shall be used when cutting
31 food samples.

32 (4) Fresh, whole produce intended for sampling shall be washed
33 or cleaned in another manner of any soil or other material by
34 potable water in order that it is wholesome and safe for
35 consumption.

36 (5) Notwithstanding Section 114205, available potable water
37 may be required for handwashing and sanitizing; the need
38 determined and manner approved by the enforcement agency.

39 (6) Potentially hazardous food samples shall be maintained at
40 or below 45°F and shall be disposed of within two hours after

1 cutting. A certified farmers' market or an enforcement officer may
2 cause immediate removal and disposal, or confiscate and destroy,
3 any potentially hazardous food samples found not in compliance
4 with this paragraph.

5 (7) Wastewater shall be disposed of in a facility connected to
6 the public sewer system or in a manner approved by the
7 enforcement agency.

8 (8) Utensils and cutting surfaces shall be smooth, nonabsorbent,
9 and easily cleanable, or single-use articles shall be utilized. If the
10 producer uses only single-use articles or maintains an adequate
11 supply of clean replacement articles readily available at the site at
12 the time of use, warewashing facilities shall not be required.

13 (c) Approved toilet and handwashing facilities shall be available
14 within 200 feet travel distance of the premises of the certified
15 farmers' market or as approved by the enforcement officer.

16 (d) No live animals, birds, or fowl shall be kept or allowed, and
17 no individual shall bring a live animal, bird, or fowl, within 20
18 feet of any area where food is stored or held for sale within a
19 certified farmers' market. This subdivision does not apply to guide
20 dogs, signal dogs, or service dogs when used in accordance with
21 the federal Americans with Disabilities Act of 1990 (42 U.S.C.
22 Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28
23 of the Code of Federal Regulations. All guide dogs, signal dogs,
24 and service dogs shall be used and properly identified in accordance
25 with Section 54.1 and subdivision (b) of Section 54.2 of the Civil
26 Code, and Sections 30850, 30851, and 30852 of the Food and
27 Agricultural Code.

28 (e) All garbage and refuse shall be stored and disposed of in a
29 manner approved by the enforcement officer.

30 (f) Smoking of cigarettes, cigars, pipe tobacco, and other
31 nicotine products, *or using an electronic cigarette as defined in*
32 *subdivision (c) of Section 22950.5 of the Business and Professions*
33 *Code*, shall not be permitted within 25 feet of the common
34 commerce area comprised of sales personnel and shopping
35 customers of the certified farmers' market.

36 (g) Notwithstanding Chapter 10 (commencing with Section
37 114294) vendors selling food adjacent to, and under the jurisdiction
38 and management of, a certified farmers' market may store, display,
39 and sell from a table or display fixture apart from the mobile
40 facility in a manner approved by the enforcement agency.

1 (h) Temporary food facilities may be operated at a separate
2 community event adjacent to, and in conjunction with, certified
3 farmers' markets. The organization in control of the community
4 event at which these temporary food facilities operate shall comply
5 with Section 114381.1.

6 (i) All harvested, cut, wrapped, or otherwise processed meat,
7 poultry, and fish products shall be from approved sources as set
8 forth in Section 113735, and shall be properly labeled or have
9 documentation present at the point of sale that demonstrates
10 compliance with this requirement. All harvested, cut, wrapped, or
11 otherwise processed meat, poultry, and fish products offered for
12 sale shall be transported, stored, displayed, and maintained at a
13 temperature of 41° F or colder. The temperature holding
14 capabilities of the storage containers used shall be sufficient to
15 maintain safe product temperatures. Storage containers for meat,
16 poultry, and fish products shall be insulated and have interior
17 surfaces that are smooth, nonabsorbent, and easily cleanable. All
18 meat, poultry, and fish products shall be stored in a manner that
19 reduces the risk of cross-contamination.

20 *SEC. 35. Section 118910 of the Health and Safety Code is*
21 *amended to read:*

22 118910. The Legislature declares its intent not to preempt the
23 field of regulation of the smoking of tobacco, *or the use of an*
24 *electronic cigarette as defined in subdivision (c) of Section 22950.5*
25 *of the Business and Professions Code*. A local governing body
26 may ban completely the smoking of tobacco *or using an electronic*
27 *cigarette*, or may regulate smoking *or the using an electronic*
28 *cigarette*, in any manner not inconsistent with this article and
29 Article 3 (commencing with Section 118920) or any other provision
30 of state law.

31 *SEC. 36. Section 118925 of the Health and Safety Code is*
32 *amended to read:*

33 118925. It is unlawful for any person to smoke tobacco or any
34 other plant product, *or use an electronic cigarette as defined in*
35 *subdivision (c) of Section 22950.5 of the Business and Professions*
36 *Code*, in any vehicle of a passenger stage corporation, the National
37 Railroad Passenger Corporation (Amtrak) except to the extent
38 permitted by federal law, in any aircraft except to the extent
39 permitted by federal law, on a public transportation system, as

1 defined by Section 99211 of the Public Utilities Code, or in any
2 vehicle of an entity receiving any transit assistance from the state.

3 *SEC. 37. Section 118930 of the Health and Safety Code is*
4 *amended to read:*

5 118930. A notice prohibiting *both smoking and using an*
6 *electronic cigarette as defined in subdivision (c) of Section 22950.5*
7 *of the Business and Professions Code*, displayed as a symbol and
8 in English, shall be posted in each vehicle or aircraft subject to
9 this article.

10 *SEC. 38. Section 118935 of the Health and Safety Code is*
11 *amended to read:*

12 118935. (a) Every person and public agency providing
13 transportation services for compensation, including, but not limited
14 to, the National Railroad Passenger Corporation (Amtrak) to the
15 extent permitted by federal law, passenger stage corporations, and
16 local agencies that own or operate airports, shall designate and
17 post, by signs of sufficient number and posted in locations that
18 may be readily seen by persons within the area, a contiguous area
19 of not less than 75 percent of any area made available by the person
20 or public agency as a waiting room for these passengers where the
21 smoking of tobacco, *or using an electronic cigarette as defined in*
22 *subdivision (c) of Section 22950.5 of the Business and Professions*
23 *Code*, is prohibited. Not more than 25 percent of any given area
24 may be set aside for smokers *or users of electronic cigarettes*.

25 (b) Every person or public agency subject to subdivision (a)
26 shall also post, by sign of sufficient number and posted in locations
27 as to be readily seen by persons within the area of any building
28 where tickets, tokens, or other evidences that a fare has been paid
29 for transportation services that are provided by the person or public
30 agency, a notice that the smoking of tobacco, *or use of an*
31 *electronic cigarette*, by persons waiting in line to purchase the
32 tickets, tokens, or other evidences that a fare has been paid is
33 prohibited.

34 (c) It is unlawful for any person to smoke, *or use an electronic*
35 *cigarette*, in an area posted pursuant to this section.

36 *SEC. 39. Section 118948 of the Health and Safety Code is*
37 *amended to read:*

38 118948. (a) It is unlawful for a person to smoke a pipe, cigar,
39 or cigarette in a motor vehicle, *or use an electronic cigarette as*
40 *defined in subdivision (c) of Section 22950.5 of the Business and*

1 *Professions Code*, whether in motion or at rest, in which there is
2 a minor.

3 (b) For the purposes of this section, “to smoke” means to have
4 in one’s immediate possession a lighted pipe, cigar, or cigarette
5 containing tobacco or any other plant.

6 (c) A violation of this section is an infraction punishable by a
7 fine not exceeding one hundred dollars (\$100) for each violation.

8 ~~SEC. 22.~~

9 *SEC. 40.* Section 119406 is added to the Health and Safety
10 Code, to read:

11 119406. (a) All cartridges for electronic cigarettes and
12 solutions for filling or refilling an electronic cigarette shall be in
13 childproof packaging.

14 (b) “Child-proof packaging” means packaging that contains
15 elements, including, but not limited to, safety caps or blister packs,
16 designed to protect children from being able to open and ingest
17 the contents.

18 *SEC. 41. Section 6404.5 of the Labor Code is amended to read:*

19 6404.5. (a) The Legislature finds and declares that regulation
20 of smoking in the workplace is a matter of statewide interest and
21 concern. It is the intent of the Legislature in enacting this section
22 to prohibit the smoking of tobacco products, *and the use of*
23 *electronic cigarettes as defined in subdivision (c) of Section*
24 *22950.5 of the Business and Professions Code*, in all (100 percent
25 of) enclosed places of employment in this state, as covered by this
26 section, thereby eliminating the need of local governments to enact
27 workplace smoking restrictions *or electronic cigarette restrictions*
28 within their respective jurisdictions. It is further the intent of the
29 Legislature to create a uniform statewide standard to restrict and
30 prohibit the smoking of tobacco products, *and the use of electronic*
31 *cigarettes*, in enclosed places of employment, as specified in this
32 section, in order to reduce employee exposure to environmental
33 tobacco smoke to a level that will prevent anything other than
34 insignificantly harmful effects to exposed employees, and also to
35 eliminate the confusion and hardship that can result from enactment
36 or enforcement of disparate local workplace smoking restrictions.
37 Notwithstanding any other provision of this section, it is the intent
38 of the Legislature that any area not defined as a “place of
39 employment” pursuant to subdivision (d) or in which the smoking
40 of tobacco products *or use of electronic cigarettes* is not regulated

1 pursuant to subdivision (e) shall be subject to local regulation of
2 smoking of tobacco products *or use of electronic cigarettes*.

3 (b) No employer shall knowingly or intentionally permit, and
4 no person shall engage in, the smoking of tobacco products *or*
5 *using an electronic cigarette* in an enclosed space at a place of
6 employment. “Enclosed space” includes lobbies, lounges, waiting
7 areas, elevators, stairwells, and restrooms that are a structural part
8 of the building and not specifically defined in subdivision (d).

9 (c) For purposes of this section, an employer who permits any
10 nonemployee access to his or her place of employment on a regular
11 basis has not acted knowingly or intentionally in violation of this
12 section if he or she has taken the following reasonable steps to
13 prevent smoking by a nonemployee:

14 (1) Posted clear and prominent signs, as follows:

15 (A) Where smoking *or using an electronic cigarette* is prohibited
16 throughout the building or structure, a sign ~~stating “No smoking”~~
17 *that states both “no smoking” and “no using electronic cigarettes”*
18 shall be posted at each entrance to the building or structure.

19 (B) Where smoking *or using an electronic cigarette* is permitted
20 in designated areas of the building or structure, a sign stating
21 “Smoking *or using an electronic cigarette*, is prohibited except in
22 designated areas” shall be posted at each entrance to the building
23 or structure.

24 (2) Has requested, when appropriate, that a nonemployee who
25 is smoking *or using an electronic cigarette* refrain from smoking
26 *or using an electronic cigarette* in the enclosed workplace.

27 For purposes of this subdivision, “reasonable steps” does not
28 include (A) the physical ejection of a nonemployee from the place
29 of employment or (B) any requirement for making a request to a
30 nonemployee to refrain from smoking *or using an electronic*
31 *cigarette*, under circumstances involving a risk of physical harm
32 to the employer or any employee.

33 (d) For purposes of this section, “place of employment” does
34 not include any of the following:

35 (1) Sixty-five percent of the guestroom accommodations in a
36 hotel, motel, or similar transient lodging establishment.

37 (2) Areas of the lobby in a hotel, motel, or other similar transient
38 lodging establishment designated for smoking *or using an*
39 *electronic cigarette* by the establishment. An establishment may
40 permit smoking *or using an electronic cigarette* in a designated

1 lobby area that does not exceed 25 percent of the total floor area
2 of the lobby or, if the total area of the lobby is 2,000 square feet
3 or less, that does not exceed 50 percent of the total floor area of
4 the lobby. For purposes of this paragraph, “lobby” means the
5 common public area of an establishment in which registration and
6 other similar or related transactions, or both, are conducted and in
7 which the establishment’s guests and members of the public
8 typically congregate.

9 (3) Meeting and banquet rooms in a hotel, motel, other transient
10 lodging establishment similar to a hotel or motel, restaurant, or
11 public convention center, except while food or beverage functions
12 are taking place, including setup, service, and cleanup activities,
13 or when the room is being used for exhibit purposes. At times
14 when smoking *or using an electronic cigarette* is not permitted in
15 a meeting or banquet room pursuant to this paragraph, the
16 establishment may permit smoking *or using an electronic cigarette*
17 in corridors and prefunction areas adjacent to and serving the
18 meeting or banquet room if no employee is stationed in that
19 corridor or area on other than a passing basis.

20 (4) Retail or wholesale tobacco shops, *retail or wholesale*
21 *electronic cigarette shops*, and private smokers’ lounges. For
22 purposes of this paragraph:

23 (A) “Private smokers’ lounge” means any enclosed area in or
24 attached to a retail or wholesale tobacco shop that is dedicated to
25 the use of tobacco products, including, but not limited to, cigars
26 and pipes.

27 (B) “Retail or wholesale tobacco shop” means any business
28 establishment the main purpose of which is the sale of tobacco
29 products, including, but not limited to, cigars, pipe tobacco, and
30 smoking accessories.

31 (C) “*Retail or wholesale electronic cigarette shop*” means any
32 *business establishment the main purpose of which is the sale of*
33 *electronic cigarettes*.

34 (5) Cabs of motortrucks, as defined in Section 410 of the Vehicle
35 Code, or truck tractors, as defined in Section 655 of the Vehicle
36 Code, if no nonsmoking employees, *or employees who do not use*
37 *electronic cigarettes*, are present.

38 (6) Warehouse facilities. For purposes of this paragraph,
39 “warehouse facility” means a warehouse facility with more than
40 100,000 square feet of total floorspace, and 20 or fewer full-time

1 employees working at the facility, but does not include any area
2 within a facility that is utilized as office space.

3 (7) Gaming clubs, in which smoking *or using an electronic*
4 *cigarette* is permitted by subdivision (f). For purposes of this
5 paragraph, “gaming club” means any gaming club, as defined in
6 Section 19802 of the Business and Professions Code, or bingo
7 facility, as defined in Section 326.5 of the Penal Code, that restricts
8 access to minors under 18 years of age.

9 (8) Bars and taverns, in which smoking *or using an electronic*
10 *cigarette* is permitted by subdivision (f). For purposes of this
11 paragraph, “bar” or “tavern” means a facility primarily devoted to
12 the serving of alcoholic beverages for consumption by guests on
13 the premises, in which the serving of food is incidental. “Bar or
14 tavern” includes those facilities located within a hotel, motel, or
15 other similar transient occupancy establishment. However, when
16 located within a building in conjunction with another use, including
17 a restaurant, “bar” or “tavern” includes only those areas used
18 primarily for the sale and service of alcoholic beverages. “Bar” or
19 “tavern” does not include the dining areas of a restaurant, regardless
20 of whether alcoholic beverages are served therein.

21 (9) Theatrical production sites, if smoking *or using an electronic*
22 *cigarette* is an integral part of the story in the theatrical production.

23 (10) Medical research or treatment sites, if smoking *or using*
24 *an electronic cigarette* is integral to the research and treatment
25 being conducted.

26 (11) Private residences, except for private residences licensed
27 as family day care homes, where smoking *or using an electronic*
28 *cigarette* is prohibited pursuant to Section 1596.795 of the Health
29 and Safety Code.

30 (12) Patient smoking areas in long-term health care facilities,
31 as defined in Section 1418 of the Health and Safety Code.

32 (13) Breakrooms designated by employers for smoking *or using*
33 *an electronic cigarette*, provided that all of the following conditions
34 are met:

35 (A) Air from the ~~smoking~~ room shall be exhausted directly to
36 the outside by an exhaust fan. Air from the ~~smoking~~ room shall
37 not be recirculated to other parts of the building.

38 (B) The employer shall comply with any ventilation standard
39 or other standard utilizing appropriate technology, including, but
40 not limited to, mechanical, electronic, and biotechnical systems,

1 adopted by the Occupational Safety and Health Standards Board
2 or the federal Environmental Protection Agency. If both adopt
3 inconsistent standards, the ventilation standards of the Occupational
4 Safety and Health Standards Board shall be no less stringent than
5 the standards adopted by the federal Environmental Protection
6 Agency.

7 (C) The ~~smoking~~ room shall be located in a nonwork area where
8 no one, as part of his or her work responsibilities, is required to
9 enter. For purposes of this subparagraph, “work responsibilities”
10 does not include any custodial or maintenance work carried out in
11 the breakroom when it is unoccupied.

12 (D) There are sufficient nonsmoking breakrooms to
13 accommodate nonsmokers *and individuals who do not use*
14 *electronic cigarettes*.

15 (14) Employers with a total of five or fewer employees, either
16 full time or part time, may permit smoking *or using an electronic*
17 *cigarette* where all of the following conditions are met:

18 (A) The ~~smoking~~ area is not accessible to minors.

19 (B) All employees who enter the ~~smoking~~ area consent to permit
20 smoking *or using an electronic cigarette*. No one, as part of his
21 or her work responsibilities, shall be required to work in an area
22 where smoking *or using an electronic cigarette* is permitted. An
23 employer who is determined by the division to have used coercion
24 to obtain consent or who has required an employee to work in the
25 ~~smoking~~ area shall be subject to the penalty provisions of Section
26 6427.

27 (C) Air from the ~~smoking~~ area shall be exhausted directly to
28 the outside by an exhaust fan. Air from the ~~smoking~~ area shall not
29 be recirculated to other parts of the building.

30 (D) The employer shall comply with any ventilation standard
31 or other standard utilizing appropriate technology, including, but
32 not limited to, mechanical, electronic, and biotechnical systems,
33 adopted by the Occupational Safety and Health Standards Board
34 or the federal Environmental Protection Agency. If both adopt
35 inconsistent standards, the ventilation standards of the Occupational
36 Safety and Health Standards Board shall be no less stringent than
37 the standards adopted by the federal Environmental Protection
38 Agency.

39 This paragraph shall not be construed to (i) supersede or render
40 inapplicable any condition or limitation on ~~smoking~~ areas made

1 applicable to specific types of business establishments by any other
2 paragraph of this subdivision or (ii) apply in lieu of any otherwise
3 applicable paragraph of this subdivision that has become
4 inoperative.

5 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
6 construed to require employers to provide reasonable
7 accommodation to smokers *or individuals who use electronic*
8 *cigarettes*, or to provide breakrooms for smokers or nonsmokers.

9 (f) (1) Except as otherwise provided in this subdivision,
10 smoking *or using an electronic cigarette* may be permitted in
11 gaming clubs, as defined in paragraph (7) of subdivision (d), and
12 in bars and taverns, as defined in paragraph (8) of subdivision (d),
13 until the earlier of the following:

14 (A) January 1, 1998.

15 (B) The date of adoption of a regulation (i) by the Occupational
16 Safety and Health Standards Board reducing the permissible
17 employee exposure level to environmental tobacco smoke *or*
18 *electronic cigarette vapor* to a level that will prevent anything
19 other than insignificantly harmful effects to exposed employees
20 or (ii) by the federal Environmental Protection Agency establishing
21 a standard for reduction of permissible exposure to environmental
22 tobacco smoke *or electronic cigarette vapor* to an exposure level
23 that will prevent anything other than insignificantly harmful effects
24 to exposed persons.

25 (2) If a regulation specified in subparagraph (B) of paragraph
26 (1) is adopted on or before January 1, 1998, smoking *or using an*
27 *electronic cigarette* may thereafter be permitted in gaming clubs
28 and in bars and taverns, subject to full compliance with, or
29 conformity to, the standard in the regulation within two years
30 following the date of adoption of the regulation. An employer
31 failing to achieve compliance with, or conformity to, the regulation
32 within this two-year period shall prohibit smoking *or using an*
33 *electronic cigarette* in the gaming club, bar, or tavern until
34 compliance or conformity is achieved. If the Occupational Safety
35 and Health Standards Board and the federal Environmental
36 Protection Agency both adopt regulations specified in subparagraph
37 (B) of paragraph (1) that are inconsistent, the regulations of the
38 Occupational Safety and Health Standards Board shall be no less
39 stringent than the regulations of the federal Environmental
40 Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall become inoperative on and after January 1, 1998, until a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking *or using an electronic cigarette* may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking *or using an electronic cigarette* in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

(A) If practicable, the gaming club or bar or tavern shall establish a designated nonsmoking area.

(B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

(g) The smoking *and electronic cigarette* prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products, *or using an electronic cigarette*, in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products, *or using an electronic cigarette*, in enclosed places of employment. Insofar as the smoking *and electronic cigarette* prohibition set forth in this section is applicable to all (100-percent) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to

1 eliminate the need of local governments to enact enclosed
2 workplace smoking restrictions *or electronic cigarette restrictions*
3 within their respective jurisdictions.

4 (h) Nothing in this section shall prohibit an employer from
5 prohibiting smoking *or using an electronic cigarette* in an enclosed
6 place of employment for any reason.

7 (i) The enactment of local regulation of smoking of tobacco
8 products, *or using an electronic cigarette*, in enclosed places of
9 employment by local governments shall be suspended only for as
10 long as, and to the extent that, the (100-percent) smoking *and*
11 *electronic cigarette* prohibition provided for in this section remains
12 in effect. In the event this section is repealed or modified by
13 subsequent legislative or judicial action so that the (100-percent)
14 smoking *and electronic cigarette* prohibition is no longer applicable
15 to all enclosed places of employment in California, local
16 governments shall have the full right and authority to enforce
17 previously enacted, and to enact and enforce new, restrictions on
18 the smoking of tobacco products, *or using an electronic cigarette*,
19 in enclosed places of employment within their jurisdictions,
20 including a complete prohibition of smoking *or using an electronic*
21 *cigarette*. Notwithstanding any other provision of this section, any
22 area not defined as a “place of employment” or in which smoking
23 *or using an electronic cigarette* is not regulated pursuant to
24 subdivision (d) or (e), shall be subject to local regulation of
25 smoking of tobacco products *or using an electronic cigarette*.

26 (j) Any violation of the prohibition set forth in subdivision (b)
27 is an infraction, punishable by a fine not to exceed one hundred
28 dollars (\$100) for a first violation, two hundred dollars (\$200) for
29 a second violation within one year, and five hundred dollars (\$500)
30 for a third and for each subsequent violation within one year. This
31 subdivision shall be enforced by local law enforcement agencies,
32 including, but not limited to, local health departments, as
33 determined by the local governing body.

34 (k) Notwithstanding Section 6309, the division shall not be
35 required to respond to any complaint regarding the smoking of
36 tobacco products, *or using an electronic cigarette*, in an enclosed
37 space at a place of employment, unless the employer has been
38 found guilty pursuant to subdivision (j) of a third violation of
39 subdivision (b) within the previous year.

1 (l) If any provision of this act or the application thereof to any
2 person or circumstances is held invalid, that invalidity shall not
3 affect other provisions or applications of the act that can be given
4 effect without the invalid provision or application, and to this end
5 the provisions of this act are severable.

6 ~~SEC. 23.~~

7 *SEC. 42.* Section 308 of the Penal Code is amended to read:

8 308. (a) (1) Every person, firm, or corporation that knowingly
9 or under circumstances in which it has knowledge, or should
10 otherwise have grounds for knowledge, sells, gives, or in any way
11 furnishes to another person who is under the age of 18 years any
12 tobacco, cigarette, *electronic cigarette*, or cigarette papers, or
13 blunts wraps, or any other preparation of tobacco, or any other
14 instrument or paraphernalia that is designed for the smoking or
15 ingestion of tobacco, products prepared from tobacco, or any
16 controlled substance, is subject to either a criminal action for a
17 misdemeanor or to a civil action brought by a city attorney, a
18 county counsel, or a district attorney, punishable by a fine of two
19 hundred dollars (\$200) for the first offense, five hundred dollars
20 (\$500) for the second offense, and one thousand dollars (\$1,000)
21 for the third offense.

22 Notwithstanding Section 1464 or any other law, 25 percent of
23 each civil and criminal penalty collected pursuant to this
24 subdivision shall be paid to the office of the city attorney, county
25 counsel, or district attorney, whoever is responsible for bringing
26 the successful action, and 25 percent of each civil and criminal
27 penalty collected pursuant to this subdivision shall be paid to the
28 city or county for the administration and cost of the community
29 service work component provided in subdivision (b).

30 Proof that a defendant, or his or her employee or agent,
31 demanded, was shown, and reasonably relied upon evidence of
32 majority shall be defense to any action brought pursuant to this
33 subdivision. Evidence of majority of a person is a facsimile of or
34 a reasonable likeness of a document issued by a federal, state,
35 county, or municipal government, or subdivision or agency thereof,
36 including, but not limited to, a motor vehicle operator's license, a
37 registration certificate issued under the federal Selective Service
38 Act, or an identification card issued to a member of the Armed
39 Forces.

1 For purposes of this section, the person liable for selling or
2 furnishing tobacco products to minors by a tobacco vending
3 machine shall be the person authorizing the installation or
4 placement of the tobacco vending machine upon premises he or
5 she manages or otherwise controls and under circumstances in
6 which he or she has knowledge, or should otherwise have grounds
7 for knowledge, that the tobacco vending machine will be utilized
8 by minors.

9 (2) For purposes of this section, “blunt wraps” means cigar
10 papers or cigar wrappers of all types that are designed for smoking
11 or ingestion of tobacco products and contain less than 50 percent
12 tobacco.

13 (b) Every person under the age of 18 years who purchases,
14 receives, or possesses any tobacco, cigarette, *electronic cigarette*,
15 or cigarette papers, or any other preparation of tobacco, or any
16 other instrument or paraphernalia that is designed for the smoking
17 of tobacco, products prepared from tobacco, or any controlled
18 substance shall, upon conviction, be punished by a fine of
19 seventy-five dollars (\$75) or 30 hours of community service work.

20 (c) Every person, firm, or corporation that sells, or deals in
21 tobacco or any preparation thereof, and, on and after July 1, 2016,
22 every person, firm, or corporation that sells or deals in electronic
23 cigarettes, shall post conspicuously and keep so posted in his, her,
24 or their place of business at each point of purchase the notice
25 required pursuant to subdivision (b) of Section 22952 of the
26 Business and Professions Code, and any person failing to do so
27 shall, upon conviction, be punished by a fine of fifty dollars (\$50)
28 for the first offense, one hundred dollars (\$100) for the second
29 offense, two hundred fifty dollars (\$250) for the third offense, and
30 five hundred dollars (\$500) for the fourth offense and each
31 subsequent violation of this provision, or by imprisonment in a
32 county jail not exceeding 30 days.

33 (d) For purposes of determining the liability of persons, firms,
34 or corporations controlling franchises or business operations in
35 multiple locations for the second and subsequent violations of this
36 section, each individual franchise or business location shall be
37 deemed a separate entity.

38 (e) Notwithstanding subdivision (b), any person under 18 years
39 of age who purchases, receives, or possesses any tobacco, cigarette,
40 electronic cigarette, or cigarette papers, or any other preparation

1 of tobacco, any other instrument or paraphernalia that is designed
2 for the smoking of tobacco, or products prepared from tobacco is
3 immune from prosecution for that purchase, receipt, or possession
4 while participating in either of the following:

5 (1) An enforcement activity that complies with the guidelines
6 adopted pursuant to subdivisions (c) and (d) of Section 22952 of
7 the Business and Professions Code.

8 (2) An activity conducted by the State Department of Public
9 Health, a local health department, or a law enforcement agency
10 for the purpose of determining or evaluating youth tobacco
11 purchase rates.

12 (f) It is the Legislature's intent to regulate the subject matter of
13 this section. As a result, a city, county, or city and county shall not
14 adopt any ordinance or regulation inconsistent with this section.

15 *SEC. 43. Section 640 of the Penal Code is amended to read:*

16 640. (a) (1) Any of the acts described in paragraphs (1) to (6),
17 inclusive, of subdivision (b) is an infraction punishable by a fine
18 not to exceed two hundred fifty dollars (\$250) and by community
19 service for a total time not to exceed 48 hours over a period not to
20 exceed 30 days, during a time other than during the violator's hours
21 of school attendance or employment. Any of the acts described in
22 paragraphs (1) to (3), inclusive, of subdivision (c), upon a first or
23 second violation, is an infraction punishable by a fine not to exceed
24 two hundred fifty dollars (\$250) and by community service for a
25 total time not to exceed 48 hours over a period not to exceed 30
26 days, during a time other than during the violator's hours of school
27 attendance or employment. A third or subsequent violation of any
28 of the acts described in paragraphs (1) to (3), inclusive, of
29 subdivision (c) is a misdemeanor punishable by a fine of not more
30 than four hundred dollars (\$400) or by imprisonment in a county
31 jail for a period of not more than 90 days, or by both that fine and
32 imprisonment. Any of the acts described in subdivision (d) shall
33 be punishable by a fine of not more than four hundred dollars
34 (\$400), by imprisonment in a county jail for a period of not more
35 than 90 days, or by both that fine and imprisonment.

36 (2) This section shall apply only to acts committed on or in a
37 facility or vehicle of a public transportation system.

38 (b) (1) Eating or drinking in or on a system facility or vehicle
39 in areas where those activities are prohibited by that system.

40 (2) Disturbing another person by loud or unreasonable noise.

1 (3) Smoking, *or using an electronic cigarette as defined in*
2 *subdivision (c) of Section 22950.5 of the Business and Professions*
3 *Code*, in or on a system facility or vehicle in areas where those
4 activities are prohibited by that system.

5 (4) Expectorating upon a system facility or vehicle.

6 (5) Skateboarding, roller skating, bicycle riding, roller blading,
7 or operating a motorized scooter or similar device, as defined in
8 Section 407.5 of the Vehicle Code in a system facility, vehicle, or
9 parking structure. This paragraph does not apply to an activity that
10 is necessary for utilization of the transit facility by a bicyclist,
11 including, but not limited to, an activity that is necessary for
12 parking a bicycle or transporting a bicycle aboard a transit vehicle,
13 if that activity is conducted with the permission of the transit
14 agency in a manner that does not interfere with the safety of the
15 bicyclist or other patrons of the transit facility.

16 (6) Sale or peddling of any goods, merchandise, property, or
17 services of any kind whatsoever on the facilities, vehicles, or
18 property of the public transportation system, if the public
19 transportation system has prohibited those acts and neither the
20 public transportation system nor its duly authorized representatives
21 have granted written consent to engage in those acts.

22 (c) (1) Evasion of the payment of a fare of the system. For
23 purposes of this section, fare evasion includes entering an enclosed
24 area of a public transit facility beyond posted signs prohibiting
25 entrance without obtaining valid fare, in addition to entering a
26 transit vehicle without valid fare.

27 (2) Misuse of a transfer, pass, ticket, or token with the intent to
28 evade the payment of a fare.

29 (3) (A) Unauthorized use of a discount ticket or failure to
30 present, upon request from a transit system representative,
31 acceptable proof of eligibility to use a discount ticket, in
32 accordance with Section 99155 of the Public Utilities Code and
33 posted system identification policies when entering or exiting a
34 transit station or vehicle. Acceptable proof of eligibility must be
35 clearly defined in the posting.

36 (B) In the event that an eligible discount ticket user is not in
37 possession of acceptable proof at the time of request, any citation
38 issued shall be held for a period of 72 hours to allow the user to
39 produce acceptable proof. If the proof is provided, the citation

1 shall be voided. If the proof is not produced within that time period,
2 the citation shall be processed.

3 (d) (1) Willfully disturbing others on or in a system facility or
4 vehicle by engaging in boisterous or unruly behavior.

5 (2) Carrying an explosive, acid, or flammable liquid in a public
6 transit facility or vehicle.

7 (3) Urinating or defecating in a system facility or vehicle, except
8 in a lavatory. However, this paragraph shall not apply to a person
9 who cannot comply with this paragraph as a result of a disability,
10 age, or a medical condition.

11 (4) Willfully blocking the free movement of another person in
12 a system facility or vehicle. This paragraph shall not be interpreted
13 to affect any lawful activities permitted or First Amendment rights
14 protected under the laws of this state or applicable federal law,
15 including, but not limited to, laws related to collective bargaining,
16 labor relations, or labor disputes.

17 (5) Willfully tampering with, removing, displacing, injuring,
18 or destroying any part of any facility or vehicle of a public
19 transportation system.

20 (e) Notwithstanding subdivision (a), a public transportation
21 agency, as defined in paragraph (4) of subdivision (c) of Section
22 99580 of the Public Utilities Code, may enact and enforce an
23 ordinance providing that a person who is the subject of a citation
24 for any of the acts described in subdivision (b) of Section 99580
25 of the Public Utilities Code on or in a facility or vehicle described
26 in subdivision (a) for which the public transportation agency has
27 jurisdiction shall, under the circumstances set forth by the
28 ordinance, be afforded an opportunity to complete an administrative
29 process that imposes only an administrative penalty enforced in a
30 civil proceeding. The ordinance for imposing and enforcing the
31 administrative penalty shall be governed by Chapter 8
32 (commencing with Section 99580) of Part 11 of Division 10 of
33 the Public Utilities Code and shall not apply to minors.

34 (f) For purposes of this section, a “facility or vehicle of a public
35 transportation system” means any of the following:

36 (1) A facility or vehicle of a public transportation system as
37 defined by Section 99211 of the Public Utilities Code.

38 (2) A facility of, or vehicle operated by any entity subsidized
39 by, the Department of Transportation.

1 (3) A facility or vehicle of the Southern California Regional
2 Rail Authority, whether owned or leased.

3 (4) A leased or rented facility or vehicle for which any of the
4 entities described in paragraph (1), (2), or (3) incurs costs of
5 cleanup, repair, or replacement as a result of any of those acts.

6 *SEC. 44. Section 561 of the Public Utilities Code is amended*
7 *to read:*

8 561. (a) Every railroad corporation, passenger stage
9 corporation, passenger air carrier, and street railroad corporation
10 providing departures originating in this state shall prohibit the
11 smoking of any tobacco product, *and using an electronic cigarette*
12 *as defined in subdivision (c) of Section 22950.5 of the Business*
13 *and Professions Code*, in the passenger seating area of every
14 passenger car, passenger stage, aircraft, or other vehicle.

15 (b) Every such corporation and carrier shall display in the
16 passenger seating area of every passenger car, passenger stage,
17 aircraft, or other vehicle, notices sufficient in number, posted in
18 such locations as to be readily seen by boarding passengers,
19 advising passengers of the no smoking requirements *and no using*
20 *electronic cigarette requirements* pursuant to subdivision (a).
21 Words on such notices which state ~~“No Smoking”~~ both “no
22 smoking” and “no using electronic cigarettes” or an equivalent
23 phrase shall be at least three-quarters of one inch high, and any
24 other explanatory words on the notices shall be at least one-quarter
25 of an inch high.

26 (c) No person shall smoke any tobacco product, *or use an*
27 *electronic cigarette*, in a space known by him or her to be
28 designated for nonsmoking passengers. A violation of this
29 subdivision is not a crime.

30 (d) As used in this section, “passenger air carrier” shall have
31 the same meaning as provided in Sections 2741 and 2743.

32 *SEC. 45. Section 99580 of the Public Utilities Code is amended*
33 *to read:*

34 99580. (a) Pursuant to subdivision (e) of Section 640 of the
35 Penal Code, a public transportation agency may enact and enforce
36 an ordinance to impose and enforce an administrative penalty for
37 any of the acts described in subdivision (b). The ordinance shall
38 include the provisions of this chapter and shall not apply to minors.

39 (b) (1) Evasion of the payment of a fare of the system.

1 (2) Misuse of a transfer, pass, ticket, or token with the intent to
2 evade the payment of a fare.

3 (3) Playing sound equipment on or in a system facility or
4 vehicle.

5 (4) Smoking, *using an electronic cigarette as defined in*
6 *subdivision (c) of Section 22950.5 of the Business and Professions*
7 *Code*, eating, or drinking in or on a system facility or vehicle in
8 those areas where those activities are prohibited by that system.

9 (5) Expectorating upon a system facility or vehicle.

10 (6) Willfully disturbing others on or in a system facility or
11 vehicle by engaging in boisterous or unruly behavior.

12 (7) Carrying an explosive or acid, flammable liquid, or toxic or
13 hazardous material in a system facility or vehicle.

14 (8) Urinating or defecating in a system facility or vehicle, except
15 in a lavatory. However, this paragraph shall not apply to a person
16 who cannot comply with this paragraph as a result of a disability,
17 age, or a medical condition.

18 (9) (A) Willfully blocking the free movement of another person
19 in a system facility or vehicle.

20 (B) This paragraph shall not be interpreted to affect any lawful
21 activities permitted or first amendment rights protected under the
22 laws of this state or applicable federal law, including, but not
23 limited to, laws related to collective bargaining, labor relations,
24 or labor disputes.

25 (10) Skateboarding, roller skating, bicycle riding, or roller
26 blading in a system facility, including a parking structure, or in a
27 system vehicle. This paragraph does not apply to an activity that
28 is necessary for utilization of a system facility by a bicyclist,
29 including, but not limited to, an activity that is necessary for
30 parking a bicycle or transporting a bicycle aboard a system vehicle,
31 if that activity is conducted with the permission of the agency of
32 the system in a manner that does not interfere with the safety of
33 the bicyclist or other patrons of the system facility.

34 (11) (A) Unauthorized use of a discount ticket or failure to
35 present, upon request from a system representative, acceptable
36 proof of eligibility to use a discount ticket, in accordance with
37 Section 99155, and posted system identification policies when
38 entering or exiting a system station or vehicle. Acceptable proof
39 of eligibility must be clearly defined in the posting.

(B) In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, an issued notice of fare evasion or passenger conduct violation shall be held for a period of 72 hours to allow the user to produce acceptable proof. If the proof is provided, that notice shall be voided. If the proof is not produced within that time period, that notice shall be processed.

(12) Sale or peddling of any goods, merchandise, property, or services of any kind whatsoever on the facilities, vehicles, or property of the public transportation system without the express written consent of the public transportation system or its duly authorized representatives.

(c) (1) The public transportation agency may contract with a private vendor or governmental agency for the processing of notices of fare evasion or passenger conduct violation, and notices of delinquent fare evasion or passenger conduct violation pursuant to Section 99581.

(2) For the purpose of this chapter, “processing agency” means either of the following:

(A) The agency issuing the notice of fare evasion or passenger conduct violation and the notice of delinquent fare evasion or passenger conduct violation.

(B) The party responsible for processing the notice of fare evasion or passenger conduct violation and the notice of delinquent violation, if a contract is entered into pursuant to paragraph (1).

(3) For the purpose of this chapter, “fare evasion or passenger conduct violation penalty” includes, but is not limited to, a late payment penalty, administrative fee, fine, assessment, and costs of collection as provided for in the ordinance.

(4) For the purpose of this chapter, “public transportation agency” shall mean a public agency that provides public transportation as defined in paragraph (1) of subdivision (f) of Section 1 of Article XIX A of the California Constitution.

(5) All fare evasion and passenger conduct violation penalties collected pursuant to this chapter shall be deposited in the general fund of the county in which the citation is administered.

(d) (1) If a fare evasion or passenger conduct violation is observed by a person authorized to enforce the ordinance, a notice of fare evasion or passenger conduct violation shall be issued. The notice shall set forth the violation, including reference to the

1 ordinance setting forth the administrative penalty, the date of the
2 violation, the approximate time, and the location where the
3 violation occurred. The notice shall include a printed statement
4 indicating the date payment is required to be made, and the
5 procedure for contesting the notice. The notice shall be served by
6 personal service upon the violator. The notice, or copy of the
7 notice, shall be considered a record kept in the ordinary course of
8 business of the issuing agency and the processing agency, and
9 shall be prima facie evidence of the facts contained in the notice
10 establishing a rebuttable presumption affecting the burden of
11 producing evidence.

12 (2) When a notice of fare evasion or passenger conduct violation
13 has been served, the person issuing the notice shall file the notice
14 with the processing agency.

15 (3) If, after a notice of fare evasion or passenger conduct
16 violation is issued pursuant to this section, the issuing officer
17 determines that there is incorrect data on the notice, including, but
18 not limited to, the date or time, the issuing officer may indicate in
19 writing on a form attached to the original notice the necessary
20 correction to allow for the timely entry of the corrected notice on
21 the processing agency's data system. A copy of the correction shall
22 be mailed to the address provided by the person cited at the time
23 the original notice of fare evasion or passenger conduct violation
24 was served.

25 (4) If a person contests a notice of fare evasion or passenger
26 conduct violation, the issuing agency shall proceed in accordance
27 with Section 99581.

28 (e) In setting the amounts of administrative penalties for the
29 violations listed in subdivision (b), the public transportation agency
30 shall not establish penalty amounts that exceed the maximum fine
31 amount set forth in Section 640 of the Penal Code.

32 (f) A person who receives a notice of fare evasion or passenger
33 conduct violation pursuant to this section shall not be subject to
34 citation for a violation of Section 640 of the Penal Code.

35 (g) If an entity enacts an ordinance pursuant to this section it
36 shall, both two years and five years after enactment of the
37 ordinance, report all of the following information to the Senate
38 Committee on Transportation and Housing and the Assembly
39 Committee on Transportation:

1 (1) A description of the ordinance, including the circumstances
2 under which an alleged violator is afforded the opportunity to
3 complete the administrative process.

4 (2) The amount of the administrative penalties.

5 (3) The number and types of citations administered pursuant to
6 the ordinance.

7 (4) To the extent available, a comparison of the number and
8 types of citations administered pursuant to the ordinance with the
9 number and types of citations issued for similar offenses and
10 administered through the courts both in the two years prior to the
11 ordinance and, if any, since enactment of the ordinance.

12 (5) A discussion of the effect of the ordinance on passenger
13 behavior.

14 (6) A discussion of the effect of the ordinance on revenues to
15 the entity described in subdivision (a) and, in consultation with
16 the superior courts, the cost savings to the county courts. The
17 superior courts are encouraged to collaborate on and provide data
18 for this report.

19 *SEC. 46. Section 12523 of the Vehicle Code is amended to*
20 *read:*

21 12523. (a) ~~No~~A person shall *not* operate a youth bus without
22 having in possession a valid driver's license of the appropriate
23 class, endorsed for passenger transportation and a certificate issued
24 by the department to permit the operation of a youth bus.

25 (b) Applicants for a certificate to drive a youth bus shall present
26 evidence that they have successfully completed a driver training
27 course administered by or at the direction of their employer
28 consisting of a minimum of 10 hours of classroom instruction
29 covering applicable laws and regulations and defensive driving
30 practices and a minimum of 10 hours of behind-the-wheel training
31 in a vehicle to be used as a youth bus. Applicants seeking to renew
32 a certificate to drive a youth bus shall present evidence that they
33 have received two hours of refresher training during each 12
34 months of driver certificate validity.

35 (c) The driver certificate shall be issued only to applicants
36 qualified by examinations prescribed by the Department of Motor
37 Vehicles and the Department of the California Highway Patrol,
38 and upon payment of a fee of twenty-five dollars (\$25) for an
39 original certificate and twelve dollars (\$12) for the renewal of that
40 certificate to the Department of the California Highway Patrol.

1 The examinations shall be conducted by the Department of the
2 California Highway Patrol. The Department of Motor Vehicles
3 may deny, suspend, or revoke a certificate valid for driving a youth
4 bus for the causes specified in this code or in regulations adopted
5 pursuant to this code.

6 (d) An operator of a youth bus shall, at all times when operating
7 a youth bus, do all of the following:

8 (1) Use seat belts.

9 (2) Refrain from smoking, *or using an electronic cigarette as*
10 *defined in subdivision (c) of Section 22950.5 of the Business and*
11 *Professions Code.*

12 (3) Report any accidents reportable under Section 16000 to the
13 Department of the California Highway Patrol.

14 (e) A person holding a valid certificate to permit the operation
15 of a youth bus, issued prior to January 1, 1991, shall not be required
16 to reapply for a certificate to satisfy any additional requirements
17 imposed by the act adding this subdivision until the certificate he
18 or she holds expires or is canceled or revoked.

19 *SEC. 47. Section 12523.5 of the Vehicle Code is amended to*
20 *read:*

21 12523.5. (a) ~~No~~A person shall *not* operate a general public
22 paratransit vehicle unless he or she has in his or her possession a
23 valid driver's license of the appropriate class endorsed for
24 passenger transportation when operating a vehicle designed, used,
25 or maintained for carrying more than 10 persons including the
26 driver and either (1) a certificate issued by the department to permit
27 the operation of a general public paratransit vehicle, or (2) a
28 certificate issued by the department to drive a schoolbus or school
29 pupil activity bus pursuant to Section 12517.

30 (b) Applicants for a certificate to drive a general public
31 paratransit vehicle shall pay a fee to the Department of the
32 California Highway Patrol of twenty-five dollars (\$25) for an
33 original certificate and twelve dollars (\$12) for a renewal
34 certificate. Applicants for an original certificate shall present
35 evidence that they have successfully completed a driver training
36 course consisting of a minimum of 40 hours of instruction within
37 the previous two years. The instruction shall have covered
38 applicable laws and regulations and defensive driving practices,
39 a minimum of eight hours of certified defensive driving, and a
40 minimum of 20 hours of behind-the-wheel training in a vehicle to

1 be used as a general public paratransit vehicle. Applicants seeking
2 to renew a certificate valid for driving a general public paratransit
3 vehicle shall present evidence that they have received two hours
4 of refresher training during each 12 months of driver certificate
5 validity.

6 (c) The driver certificate shall be issued only to applicants
7 qualified by examinations prescribed by the Department of Motor
8 Vehicles and the Department of the California Highway Patrol.
9 The examinations shall be conducted by the Department of the
10 California Highway Patrol. The Department of Motor Vehicles
11 may deny, suspend, or revoke a certificate valid for driving a
12 general public paratransit vehicle for the causes specified in this
13 code or the Education Code or in regulations adopted pursuant to
14 this code or the Education Code.

15 (d) An operator of a general public paratransit vehicle shall do
16 all of the following:

17 (1) Use seatbelts.

18 (2) Refrain from smoking, *or using an electronic cigarette as*
19 *defined in subdivision (c) of Section 22950.5 of the Business and*
20 *Professions Code.*

21 (3) Report any accident reportable under Section 16000 to the
22 Department of the California Highway Patrol.

23 (e) A person holding a valid certificate to permit the operation
24 of a general public paratransit vehicle, issued prior to January 1,
25 1991, shall not be required to reapply for a certificate to satisfy
26 any additional requirements imposed by the act adding this
27 subdivision until the certificate he or she holds expires or is
28 canceled or revoked.

29 ~~SEC. 24.~~

30 *SEC. 48.* No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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